S. Hrg. 101-164

REPORT OF 1989 COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

JANUARY 31 AND FEBRUARY 1, 1989

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S401-45

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REPORT OF 1989 COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

TUESDAY, JANUARY 31, 1989

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, in room SD-342, Dirksen Senate Office Building, Hon. John Glenn, Chairman of the Committee, presiding.

Present: Senators Glenn, Stevens, Cohen, Heinz, Roth, Pryor, Lieberman, Wilson, Kohl, Sasser, and Levin.

OPENING STATEMENT OF CHAIRMAN GLENN

Chairman GLENN. Raising Congressional pay has been a historical problem ever since the founding days of this country. In more recent years, the Quadrennial Commission has been given this job to try and ease the pain of it a bit. But complications, of course, have developed through the years since a Congressional pay raise involves not just the Members of Congress themselves, but Federal pay for civil service positions is also tied to Congressional pay.

Military pay, then, in turn, is linked to civil service, and judicial pay has also been linked. We have generals in the military whose salary is capped at the two-star level because their pay cannot exceed Congressional pay. Therefore, military generals pay is capped once they reach two-star rank, no matter how much their responsibilities may increase over time.

On the civil service side of pay, there are many serious considerations for raising salaries, such as the demand for scientists that the Government can no longer hire and the need to recruit people into public service to administer our trillion dollar budget each year. And, in these cases, we should raise pay or do something to de-link the pay associations that have occurred.

Now, whether it is right for anyone to have a 51 percent pay increase at any one time is a real question. It is a rather bitter pill for people across the country to swallow, who have never had even anything close to a 51 percent pay raise no matter how far they figured they had gotten behind.

Another problem with current pay raise proposal is the honoraria issue and whether we should be addressing the honorarium at the same time we take care of a Congressional pay raise.

On January 9, 1989, President Reagan transmitted pay recommendations to the Congress in accordance with the terms of the 1967 Federal Salary Act which created the Commission on Execu-

tive, Legislative, and Judicial Salaries, also known as the Quadrennial Commission.

The President's proposals would raise the salaries of senior-level Federal executives, Federal judges and members of Congress. The President's plan takes effect within 30 days of its submission unless Congress enacts a joint resolution to disapprove the salary proposals. The joint resolution would then require the President's signature over a veto.

In my capacity as Chairman of the Governmental Affairs Committee—the Committee with jurisdiction over the Civil Service personnel system—I have been asked by the Senate leadership to chair hearings on President Reagan's pay proposals in order to provide the Senate with a forum on the pay raise issue.

Let me say when I was asked to chair these hearings, I was reminded a little bit of the story that Abe Lincoln reportedly told of the man who was tarred and feathered and being ridden out of town on a rail. When asked how he felt, he was said to have replied: "I don't know whether I'd like to travel this way or not if it weren't for the honor of it all."

So please let me say, given the many public outcries against the Congressional pay raise proposal, I do not know if I would prefer to be holding these hearings, if it weren't for the honor of it all!

The procedure that we will follow will be that since we are given a discharge time on the pay raise proposal in the Committee, we will not take a vote on this. Instead, we will send this back to the Senate. We, in effect, are the forum by which we can have the record of those who wish to testify, both pro and con, on the whole pay raise issue, and we will do that today and tomorrow.

We have asked for various Administration witnesses to come before us, and we were refused on that, As of late yesterday afternoon, they said they would let the President's statement that he made at his press conference last Friday be the Administration's definitive position on the pay raise. And they sent over a copy of that from the White House, and we received it just a few moments ago. This will take a couple of minutes, but I would like to read it into the record so that we have this as the Administration's position:

QUESTION. Mr. President, you said before you became President that you supported Ronald Reagan's decision on 50 percent pay raise for members of Congress and that you would have something more to say about it once you got to the Oval Office. Most of the polls show that a vast majority of Americans oppose that pay raise.

The PRESIDENT. Yes.

QUESTION. Now you are President. What is your view on that pay increase?

The PRESIDENT. Well, I did say I supported it, and I do support it. A raise is overdue; there is no question about that. There are some good things in this. The reform of the honorarium, payments for these speeches, I think this is very, very good. I think it is good government. It is a complicated formulation. There are some elements that bother people, including me, but the President did consider all this carefully. He went forward with the Commission's recommendation. And that, because of the way it works on Congress, and the ball is clearly in their court, it leaves us with either the Commission recommendation or nothing. And so, seeing the problems as I do, I still feel that I should not go about undoing the Reagan decision.

QUESTION. As you know, the minimum wage has been frozen for even longer than Congressional pay raises. Since you support a large increase in pay for the most affluent one percent of the country, would you favor pushing for an increase in the minimum wage, which would benefit the lowest income groups of the country, as part of your promise in your inaugural address to reach out to all of the people?"

The PRESIDENT. I would—I have always said that my position on minimum wage is that I would want it linked to a training wage, to a differential of sorts, so that you do not throw people out of work by raising the minimum wage.

And I am not one who has felt that the minimum wage is the key to economic prosperity for people on the lowest end of the economic spectrum. But, as I indicated—a certain flexibility on that question. And again, I will wait for Elizabeth Dole, who takes office the next couple of days, to come in with her recommendation.

QUESTION. Are you concerned, from the standpoint of perception, that you are supporting a pay raise for a high-income group and not pushing on an equal basis for a lower-income group to give the public perception that you are lobbying for a wealthy sector of the country?

The PRESIDENT. No, I am not concerned by that perception because—but I am troubled by certain aspects of the proposal, as I think I have indicated—the pay raise proposal. But we are down to the crunch here, the recommendation's up there on the Hill. It is yea or nay; I mean, it is one way or the other. But I do not think that would be fair at all.

I think the main thing in terms of the question you raised—jobs: How do we continue to create jobs, keep it going? And I have given you one ingredient that I think has to be part of any consideration of the minimum wage, but as I have indicated, I am flexible on how that should be accomplished. But, I am not sure that one can make a connection between the minimum wage and more employment. I think you can—if you raise the minimum wage without the differential, I think you will reduce employment.

So I think the main thing in the area you are talking about is, how do we increase economic opportunity? And maybe there is a way to do it, but I do not think it would be fair to say, when you take a pay raise that affects a tiny fraction—judges and Congressmen—that it has a broad economic impact on the country. I have expressed some concern about it, but for other reasons.

QUESTION. Mr. President, I would like to try the pay raise one last time. As you just said, it is not just for Members of Congress and not just for Federal Judges: It is for a lot of senior officials of the Government, political appointees. You have also told some reporters in recent days that you are concerned about the long-term pension implications of all these larger salaries. Would you not be happier with a pay raise that is a little bit less rich than 50 percent?

The PRESIDENT. I do not have that option to get into that now. I have, I think, expressed myself in the past in separating out some of these catagories but were not—regrettably, you are never dealing with just the way I would like it to be. And so I will just leave it that way, I will leave it that, my earlier statement.

And that completes it. We have a couple of extra areas involved in that answer of the President, but the Administration said that this was their position on the pay raise. Therefore, the people we had asked to come over and testify were not permitted to come. Their statements were not going to be cleared.

The procedure we will follow are those in favor of the pay raise will testify today. We have had a couple of principal pay raise proponents, the Chairman of the Quadrennial Commission, Lloyd Cutler, who is with us this morning as well as the others who will testify later, Mr. Wertheimer, and the Federal judges.

We will welcome additional statements from other interested parties. We have had a lot of requests from a lot of people from all over the country to testify. I will say that if we permitted all of the people to testify who have asked to testify, it would take so much time that the clock would run out on disapproving the pay raise and the pay raise would be inadvertently filibustered into being. Therefore, we have chosen the leading representatives and we will proceed this way today and tomorrow.

Our witnesses today include Lloyd Cutler, Chairman of the 1989 Commission on Executive, Legislative, and Legislative Salaries, or the Quadrennial Commission as it is more popularly known. Of course, the reason we are holding the hearing today is to review

the recommendation of Mr. Cutler's Commission, so I am especially looking forward to his testimony.

Fred Wertheimer is the President of the public interest group Common Cause. Mr. Wertheimer has been very outspoken in his support for a ban on Congressional honoraria.

The Honorable Judge Frank M. Coffin serves on the First Circuit Court in Maine and is Chairman of the Judicial Conferences Committee on the Judicial Branch. It should also be noted that Judge Coffin served his State of Maine as a U.S. Representative from 1957 through 1960, so he has seen this from Washington's viewpoint also.

The Honorable Judge Leon Higginbotham, Junior, serves on the Third Circuit Court of Appeals in Pennsylvania. He has served on the Federal Bench for 25 years.

The witnesses that we will have tomorrow that will represent those opposed to the pay raise will be Senators who have asked to testify: the Honorable Gordon Humphrey of New Hampshire; Larry Pressler of South Dakota; Charles Grassley of Iowa. In addition, we will have Ralph Nader, consumer advocate, accompanied by John Claybrook who is President of Public Citizen, and Mr. David Keating who is Executive Vice-President of the National Taxpayers' Union.

So these have been the main pro and con spokesmen, and we welcome them to our hearings and with that, before we proceed to Mr. Cutler, any other statements by Senator Roth or any other members of the Committee?

Senator Roth?

OPENING STATEMENT OF SENATOR ROTH

Senator ROTH. Mr. Chairman, I have no prepared statement, but I do congratulate you for holding hearings on what is undoubtedly one of the most contentious of issues, compensation for senior Government officials. I might say in the many years I have served in the Congress, this has always been controversial, and I think it is a fair statement to say that irrespective of the size of the increase, there has never been much public support. But I think it is important that we have such hearings, balanced hearings, with the opportunity for both proponents and opponents to state their point of view, and I would hope that the public would keep an open mind as they listen to the point of views expressed today and tomorrow.

The Chairman has already mentioned in some detail the political questions, but it seems to me the basic policy question is what should be the criteria to determine fair compensation for senior Government officials. That is, in other words, what is necessary to attract and to maintain qualified officeholders from all walks of life.

And I might say, Mr. Chairman, I think a subsidiary but important question is how these decisions should be made. Should members of Congress be required to vote on their own compensation as many editorialize, or should there be an alternative process to avoid what many believe is a conflict of interest that prevents this matter from being rationally resolved?

I want to say I look forward to hearing the distinguished citizens on both sides of this issue, and I want to particularly thank my favorite liberal Democrat, Lloyd Cutler, for once again demonstrating the kind of public service that I think is so important in this Government.

Thank you, Mr. Chairman.

Chairman GLENN. Senator Pryor, do you have any statement?

Senator PRYOR. Mr. Chairman, I have no comment at this time, thank you.

Chairman GLENN. Senator Stevens.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Mr. Chairman, I too am pleased to see Mr. Cutler and the others here today. I have now served on this Committee for 20 years. The first issue that came before it the first year I came was a pay raise. I am one who does not believe that it is a conflict of interest for us to carry out our Constitutional responsibility to establish the rates of pay for all Federal employees. And we are Federal employees.

I also believe, and I will demonstrate this in statements on the floor in charts that I will present out there, that as a result of the failure of Congress to accept its responsibility in the past, particularly since 1970, we have held down rates of pay for senior executives in the Executive Branch, and Federal judges to the point where we are now seeing the results.

Dr. Fauci testified before Mr. Cutler's Commission, and I hope he mentions that and others, that we have not been able to recruit a single, senior research scientist from the private sector or the academic world in 10 years because we link the pay of Executive Branch people to the Congress.

We are losing Judges now who are retiring because they cannot afford to stay in those positions due to the comparable pay that they can make if they leave. I will demonstrate that we are losing mid-career Federal employees at a rate unheard of in our democracy.

It is not our right to deny the people of the United States the best quality in the Federal Executive Branch. Mr. Chairman, I am not going to pursue this too long but I want to state to the Senate and to my friend, Mr. Cutler, that if Congress fails to put into effect this pay raise this year, I shall introduce legislation to take Congress out of the quadrennial process and let the quadrennial process work on the question of comparability of all other Executive employees. And Congress can fend for itself, somehow, in the final result. We cannot continue this process.

At one time, I had a Congressional amendment introduced to the Senate, Mr. Chairman, to give the right to set Congressional salaries to the Supreme Court and let us continue to set all other salaries. That did not pass because someone called State legislators and asked them how they would treat such an amendment and they said, "We have enough trouble setting our own pay. We do not want to get involved in yours."

Now, there is a dilemma here but it ought not to be continued. I am alarmed at the way the public perceives this issue totally in

terms of Congressional salaries without regard to history, without regard to the impact on the Republic.

I have asked that a chart that I have had made of salary increases since 1978 for Members of Congress, Federal employees and Federal retirees and the percentage changes in C.P.I. and these salaries be placed in the record, Mr. Chairman.[1]

Chairman GLENN. Without objection, so ordered.

Senator Lieberman?

OPENING STATEMENT OF SENATOR LIEBERMAN

Senator LIEBERMAN. Mr. Chairman, thank you.

Mr. Cutler, good morning—actually he is Dr. Cutler, are you not? You have a Juris Doctor degree?

Mr. CUTLER. I have an honorary doctorate from your university.

Senator LIEBERMAN. Right. That I know well, and I am proud of that.

Mr. Chairman, Mr. Cutler, as a newcomer here, I am feeling all the agony that goes with considering this particular issue early in one's career. It is an agony that is amplified as my wife and I look at real estate here in the District of Columbia.

Be that as it may, I think you understand what I face when I go back to Connecticut. We are already making more than most people in this country, and it is hard for us to explain why we are considering a 50 percent increase particularly at this time. I am sure you will address yourself to that question, Mr. Cutler, in your statement.

Unfortunately, I have to go on in a while to another hearing, but the question that I would like to ask you and others to address is the systemic question of whether there is a better way to do this.

I know that in 1984 the Senate Judiciary Committee reported out a proposal that would have amended the Constitution to create an independent commission to set Congressional compensation. I would be interested in your reaction and that of the other witnesses today and tomorrow as to whether that would improve on the current system.

Thank you, Mr. Chairman.

Chairman GLENN. Senator Cohen.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you.

I first want to apologize to my good friend, Judge Coffin from Maine, that I cannot stay to hear your testimony. We are having the confirmation hearings of Senator Tower and I am required to go over there to participate this morning in that.

I want to also welcome Mr. Cutler. I have had the pleasure and the privilege of working with him on a number of issues. He is a private attorney, but he has dedicated a good part of his life, I would suspect, to public issues and public service. In particular, we have spent a good many hours working together on the Independent Counsel law, so I want to welcome him here today.

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[1] See p. 247.

Mr. Chairman, I was unable to join you over the weekend due to a family emergency back home. I wish I could have been with you at that particular conference on NATO defense issues, but it required me to go home and to help out on a family matter, and I was participating with my father in helping to bake and deliver bread. He commented it was the first time I had been "in the dough" for a long time, I might add, but it gave me a unique opportunity, I might say, to come into contact with constituents in sort of over-the-counter politics, if you will. I cannot recall in the 16 years of service in the Congress of an issue that has struck the general public with greater intensity than the pay raise.

One of the problems I have, and Senator Stevens talked about it just briefly, is that we tend to duck tough choices. We heard a lot about this during the campaign about tough choices. It seems to me that every time we run into a tough choice, we create a commission. We created a commission on base closures, we created a commission to solve the budget crisis, we created a commission to deal with the Social Security crisis, and we seem very adept at coming up against tough problems and creating a commission to solve those problems for us. I agree with Senator Stevens. I think it is time that we were carrying out our own responsibilities, Mr. Chairman, we are the commission. My understanding is that we, the Congress, should be the commission and should not turn to outside independent sources to resolve our problems.

I think that the public is concerned about two issues with regard to the pay raise. One is the money in terms of the size of the pay raise. The public finds it to be particularly exorbitant and indeed touches upon being arrogant in the way in which we have gone about it. Second, the public opposes the method, namely, no vote on a pay raise. I think this is as troubling as the money itself, although there is indeed great objection to the size of the pay raise.

I do not think it is appropriate that we duck the issue by simply letting it go into effect, and I do believe there should be a vote on this issue, Mr. Chairman, and I have joined with a number of my colleagues to try and enforce that particular solution.

I think that we have the burden of making these "tough choices" and we have the measure of responsibility that we have not carried out.

So, I am afraid I will not be able to hear your testimony, Mr. Cutler. I do admire your dedication. I think that you, Mr. Wertheimer and Judge Coffin and others, have certainly started a debate which is long overdue. But I must say that I have grave problems with the way in which we are going about increasing our pay at a time in which I believe this Administration is going to call upon a majority of Americans to sacrifice, to tighten their belts, and to deal with the budget deficit. It is very difficult to do this if we are generating not respect, but resentment. And I think that is the case right now.

Thank you, Mr. Chairman.

Chairman GLENN. Thank you.

Senator Kohl.

OPENING STATEMENT OF SENATOR KOHL

Senator KOHL. I want to thank you, Mr. Chairman. I think you are to be commended for these hearings particularly because they are so sensitive, and I think your willingness to face the issue head-on and to ask us all to face it with you here this morning is particularly helpful.

I think that those of us who are participating in this process have a responsibility to take fairly clear positions and to enunciate them as clearly as we can. After all, we are talking about our own pay, and certainly all of us have, in fact and in truth, honest opinions about that which are pretty clear; they are not ambivalent. I do not think there is a Senator or Congressman who does not feel yes or no about this. It would be hard for me to imagine anyone of us who does not have a clear opinion, and I think that the people have a right to know what that opinion is. So I come here this morning to state my opinion and, of course, to ask you questions and comment on your position on the matter.

Speaking for myself, I am pretty well-off and so it makes it easy for me to say, as I have already said several times, that I will vote against the pay raise, and I will not accept it if goes into effect. But my position is based not only on my own financial independence; rather it is based on what I regard to be our Nation's fiscal dependence.

One of the reasons I sought a seat in the United States Senate was my concern about our Federal deficit. And I have been critical of the failure of Congress and our President to make the kinds of tough decisions, oftentimes unpopular, that are needed if we are to get our Federal budget under control.

I am prepared to make these decisions. I am prepared to tell some really deserving groups that while their requests for more money are justified, they just are not going to get everything they want. And I am prepared to say that we just cannot go on the way we have. Everyone is going to have to pull together, and that we must be prepared to accept some hard sacrifices and some shared sacrifices.

And I am asking the question how in the world we are going to say that after we have given ourselves the 50 percent pay raise? How are we going to ask the people of this country to make the sacrifices that are needed to put our national house in order after we have feathered our own nest. And I believe that we should make no mistake about it; this is is a budget-busting kind of a vote. It is a budget-buster in my judgement because it substantially reduces our moral ability to reduce spending.

Now, Mr. Chairman, I am not denying that some of our colleagues need more money or that they can make more in the private sector. What I am saying is that we cannot give more to the richest of us and then hold the line on benefits for everyone else.

People are cynical, and who can blame them? They listen to our moving rhetoric about the nobility of sacrifice. They hear Government officials give speeches describing how material values are corrupting our society. They try to respond to pleas for increased contributions to charities and increased participation in community

service programs. And after all that, what do they do—they watch us raise our own salaries.

Mr. Chairman, there are a lot of pressing needs in this Nation. We do not need to enunciate all of them, for we are all very well aware of them. All of them deserve more money than we can give them. And I do not believe that we should add insult to injury. When we are asking others to make the kinds of sacrifices we are asking them to make, we ought to have the decency and not to take more for ourselves, in particularly in the way in which we are doing it.

Chairman GLENN. Thank you.

Senator Heinz.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Mr. Chairman, I have to go and act as ranking member on a hearing myself in about 30 seconds, so I will be very brief.

I think we all have thoughts on the work of the Commission. My particular concern is not only over the amount of the pay raise, but the job that we have given the Commission, it seems is a flawed mission. We have not asked the Commission to look at where there is genuine shortage of personnel.

The Commission does supply anecdotal information about the Judiciary, but I think that a careful analysis would indicate that there are no shortages of people for a lot of jobs. I do not notice any lack of résumés for Cabinet or sub-Cabinet positions nor for people running for public office. And I would submit that in the latter category particularly, that even if there was a lack of people running for public office, it would have very little to do with pay scale because pay is the least of the compensations to a member of Congress. I am not just referring to the perks and the pensions and the health benefits, swimming pools and the health club. Power is the ultimate compensation. On that basis, there are many people who are willing to step forward irrespective of pay. The Commission was not asked to look at, if you will, the supply and demand of Federal officials.

Necessarily, the Commission's recommendations must be flawed. Neither was the Commission asked, and it seems to me it is our job to ask whether there are other factors which mitigate against people attempting to serve in the Congress. One of the reasons that it is probably daunting to a lot of able people is that the Congress is increasingly a closed system, having very little to do with honoraria, having something to do with PAC contributions, having a lot more to do with things like Congressional News Letters. If people do not think they can get hired for a job, they are not going to apply irrespective of whether the pay is $90,000 or $190,000.

My last comment, Mr. Chairman, is that I commend you on holding these hearings. Out of these hearings I would hope would come not just the discharge of this issue, but a new approach to analyzing what it is we need to do in the Congress, in the Executive Branch, in the Judiciary.

I think we have only scratched the surface to the point where, you might say, down deep we have touched the issues only on the surface.

As to the Congressional aspects of the pay raise, as my colleagues have pointed out, there is tremendous cynicism because of the process. People see currently the old adage "vote no and take the dough" becoming reality.

My own view is it is cynical for Congress to say we are going to be tough on the budget but not on our pay, and you might say, to coin a new version of an old saying, that when it comes to Congressional compensation and our pay, that it is all too accurate, as of today, absent the work of this Commission to say that when the going gets tough, the tough go home.

Thank you.

Chairman GLENN. Thank you.

Mr. Cutler, after those remarks this morning, we welcome you here.

You were Chairman of the Commission on Executive, Legislative and Judicial Salaries, better known as the Quad Commission. We look forward to your statements this morning. I am sure we will have some questions for you afterwards.

TESTIMONY OF LLOYD CUTLER, CHAIRMAN, 1989 COMMISSION ON EXECUTIVE, LEGISLATIVE AND JUDICIAL SALARIES

Mr. CUTLER. Thank you, Mr. Chairman.

Mr. Chairman, you referred in your remarks to Abraham Lincoln. I would like to refer you to James Madison's views on this same subject. He recognized the so-called conflict of interest that a number of you have referred to with Congress voting on its own salaries and he proposed that the salaries of the members of Congress be indexed with the price of wheat, which was the CPI of those days.

The conflict is not so much that you are voting in favor of increases for yourselves, although it is an oddity, I admit; I do not know any other person in business or anywhere else who fixes his own salary. But the problem is not that you will give yourselves too much but that for fear of voter disapproval, you will give yourselves too little. And while you may be commended for being willing to accept too little, at the same time you refuse to allow the rest of the Government, the Executive and Judicial Branches, the coequal branches, to be paid what they should be paid in order to attract and retain people of the highest competence.

That is why the Quadrennial Commission process was created back in 1967. I wanted to describe very briefly the standards we used in accordance with this statute that you set up to determine what, according to our statutory mandate the appropriate salary level should be for each branch of the Government and these top 2500 positions in the three branches that are within our responsibility.

We decided the best place to start would be the salaries set in 1969 under this process. The first Commission recommended increases which, interestingly enough, were in the 50 to 60 percent range to make up for past erosion by inflation, pre-1969 erosion by

inflation and comparability with the private sector, not just the profit-making private sector, but even the nonprofit-making sector, like universities, hospitals, city managers, et cetera.

The President cut those increases somewhat, President Johnson, but his proposed increases to make up for past inflation and for comparability were of the order of 40 percent at so-called Level 2 in the Executive Branch which, historically, has been at the same level at which members of Congress and district judges are paid.

Congress allowed those increases to take effect, and they are, I would submit to you, and our Commission believes, a reasonable base point from which to start. We came as close as we could to a consensus in 1969 as to what top Federal salaries ought to be. Interestingly enough, since 1969, the average American, the American who does not work for the Federal Government, has more than kept pace with inflation. I think our report states that he, the average American, is 1.5 percent better off today in real dollars than he was in 1969.

The top Federal official, on the other hand, has had his salary eroded by some 35 percent since 1969. Judges like Judge Higginbotham sitting behind me, who was on the bench by 1969, is getting $65 today for every $100 in real dollars, constant dollars, that he received in 1969. He has taken a one-third pay cut and to make up for one-third pay cut, it is simple arithmetic that if you had 100 and you are down to 65, that to add 35 on to your present base of 65, is approximately a 50 percent increase.

Every one of these Quadrennial Commissions—and they are appointed in part by you, members of Congress; four of the nine members are appointed by you, three by the President, and two by the Chief Justice—every one of them has concluded that top salaries have been eroded by inflation and are so out of phase, even with the nonprofit part of the private sector, that it has become extremely difficult to recruit and to retain top talent for the Executive Branch and for the Judiciary.

And, of course, the costs of serving in a Congress, particularly a Congress that now meets in Washington for more than 200 days a year, are higher than they ever have been before.

We used the 1969 figures and the nonprofit sector levels that exist today in universities, in museums, in hospitals, in other parts of the nonprofit private sector where the satisfaction of public service is as great or almost as great as in the Federal Government, and we find that top Federal salaries fall short by 50 percent or more of what is being paid to the same people in the private sector.

I believe you, Senator Stevens, mentioned we should refer to Dr. Fauci of the National Institutes of Health, our top AIDS researcher. He testified that for the past 10 years the NIH has been unable to fill its top research positions. And the supreme irony of all of that is that instead of filling those top positions, NIH contracts out to the universities and the hospitals who pay these scientists a nonprofit private sector wage, and they provide the scientist to work for the Federal Government adding on probably 100 percent for overhead or whatever normal overhead is today, and those researchers work side by side with young Federal researchers on the same projects. The taxpayers are paying twice as much for those people as a fair Government salary would be—and just imagine

how long the young scientist in the Federal Government working for $80,000 a year, how long he stays there when the man he is working right next to is being paid $150,000 a year, and every university in the country is trying to recruit that young scientist and then lease him back to the Government under a contract.

That is not a very efficient system.

This proliferates throughout the Executive Branch. The average time in office for the top Executive Branch officials today, the 700 or 800 people for whom we are responsible, is 18 months. These are mostly young people who learn their skills within the Federal Government and as soon as their skills are good enough to be marketed to private industry, out they go. And it is the Federal Government that suffers that personnel turnover.

Many of you are worried about the consultant scandal in the Pentagon. One reason for the consultant scandal is that the top civilian procurement people in the Pentagon are paid too little, and they will be offered a lot more to go out and become consultants. And they go out and they do that as fast as they can. And who do you think pays the salaries for the compensation they earn as consultants? You do, we do, the Federal taxpayer pays them because all of those consultant fees are part of the cost of the Pentagon contractors doing business.

So it is all very well to talk about how we should sacrifice, people should appreciate the honor, the satisfaction of power that Senator Heinz referred to, of being in the Federal Government, and that is true up to a point. But when it gets to the point that your children, who are admitted to a fine university, you cannot afford to send them there and you have to ask them to go someplace else, if it gets to the point where you cannot provide for your family what you could provide in the private sector, indeed, doing the same work for the Federal Government and being paid by the private sector, that is penny-wise and pound-foolish.

I will not speak about the Judiciary because Judge Higginbotham and Judge Coffin are here, and they will make the case for themselves. But I will only point out that the the Constitutional structure was that we would have judges who serve for a lifetime so that their independence would be secure, and they would be trusted by the public to dispense justice. We also have the diminishment clause that says the salary of a Federal Judge may not be diminished in his term of office. Beyond question, Judge Higginbotham's salary—and he began before 1969—has unconstitutionally been diminished by 35 percent, and it takes a 50 percent increase to get him back where he was in 1969.

We are very proud of the diverse Judiciary we have today. The American public probably trusts judges more than citizens of any democratic country in the world trust their judges. And the reason is because of this lifetime system, and because we achieved diversity on the Bench, women, minorities, we have a very diverse Bench today. But something like 30 percent of the sitting judges have said that if this situation is not corrected, they intend to leave. And that 30 percent includes a very substantial number of the minority judges and the female judges on the Bench. And if we do not do something about this situation, we are going to get back to a Bench of rich, big city law firm millionaires who can afford the fun of 10

years on the Bench after they have made their money and educated their children.

Once again it seems to me that is extremely penny-wise and pound-foolish. The case for increases in Congress is somewhat less compelling, I grant you that, but there is no question that members of Congress who have to live here—and we want them to have their families here if at all possible—Congressmen cannot live on their present salaries. Perhaps the rich one like Senator Kohl, can. But Congressmen in their 40's with children to educate and the need to maintain a household here, have great difficulty living on these salaries.

And I submit to you there is no question that even members of Congress could earn far more outside in the private sector than they can in Congress.

You have gotten around this problem by various ways of compensating yourselves, most notably, this practice of accepting honoraria for making talks to citizen groups about the public's business, about what you are doing. On average, you take in something on the order of an additional 20 percent of your salaries in honoraria, much of it from people who are trying to lobby you to vote one way or another on a particular issue.

I do not know of anyone who could stand up and defend the integrity of that practice. I am not suggesting for a moment that Congressmen are selling their votes, but the appearance is one of which I would think you should all, when you reflect on it, all of us, should feel ashamed and it ought to be wiped out.

The increase for Members of Congress, if accompanied by the outlawing of honoraria, is nothing like 50 percent, even though 50 percent might be really what you need to correct for inflation since 1969. It is probably more on the order of 25 percent if honoraria are surrendered—and I do not have any doubt in my own mind that public opinion will require you in the end, in your own self-respect, to surrender honoraria completely. And that is what our Commission recommends.

I will make just one more point, and that is in response to Senator Lieberman's as to whether there is a better way.

We are not a town meeting Government. We are a representative Government. There are many features of our Government that you might describe as undemocratic, but we think they serve important Constitutional values—for example, this lifetime service for judges, the appointment of judges rather than their election, which we have provided for in our Constitution.

We have many other types of decisionmaking in which you, the Congress, delegate authority to a decisionmaker either because you have a conflict or because the political pressures on you are so great that you cannot reach a decision in the national interest.

We passed and Senator Cohen referred to the independent counsel law which Congress passed because it concluded that the President and the Attorney General had a personal/political conflict of interest in investigating and bringing charges against high members of their own Administrations. Undoubtedly true.

You have a personal/political conflict of interest in voting on your own salaries. The 1969 statute and the present statute are a way to resolve that political conflict of interest by delegating the

authority to another responsible elected official, the President of the United States.

If the present method, which gives you an opportunity to vote, and vote against I would submit what most of you believe is truly in the national interest, at least as to judges and to Executive Branch officials because you feel you are compelled to politically, if you think that is an inadequate system, there is a perfectly Constitutional solution which our Commission has recommended and which I believe Common Cause has recommended, namely to vest this power to fix salaries, or at least Executive and Judicial salaries—but I would recommend all three because you are three equal branches—in the President or in a commission appointed by the President subject to confirmation by the Senate. And let that commission make the decision once and for all, just as many other commissions have been delegated interstitial legislative power of this type.

That would be perfectly Constitutional. The Constitution requires only that the salaries of members of Congress be established by law, and a law delegating that authority to the commission would be perfectly Constitutional. And the Supreme Court, just this last year, rejected a challenge to the present law that was based on the very same grounds.

So I would urge that if you must vote, if you feel compelled to vote, vote as you—and I say this not in any pejorative sense—vote as you feel the national interest requires. Do the best you can, as we all try to do, to overcome the personal/political conflict of interest on what is going to happen to you out there if you think these increases are right.

And if you feel compelled, with respect to your own compensations, to vote against the increase, nothing compels you to vote against the increases for members of the Executive and Judicial Branches. They should not be held as hostages to what you feel politically compelled to do about yourselves. And I would respectfully submit that that sort of "dog in the manger" attitude is unworthy of the greatest deliberative body in the world.

Thank you, sir.

Chairman GLENN. Thank you, Mr. Cutler. Thank you very much.

The two things I find in my own mail and in talking to people back home that they object to most is the size of the increase that has been recommended, the 51 percent, and also the honorarium. They wish that was taken care of also. There has been a rising doubt about whether we should continue the practice of honoraria. I have never accepted it myself, so I guess it is easy for me to take a stand against it.

But did you consider a phase-in of the 51 percent? Did you consider that—I know you must have had discussions that 51 percent to the average American is a whopping big raise. Even in union contracts being renegotiated, it may be a 10 percent a year increase over a 3-year period to get up to a 30 percent rise in their pay.

Did you consider phasing this in, and if that was turned down, why?

Mr. CUTLER. Unfortunately, Senator Glenn, we have no authority to recommend a phase-in. Our responsibility and the President's re-

sponsibility is to recommend appropriate salary levels for the 1989 budget.

We exist only once every 4 years. And it is the 1989 budget we have to deal with. If we said let's make it 12.5 percent in 1989 and the balance, another 12.5 percent for each of the next 3 years, that would require legislation on your part which would probably never happen. And that is only to make up for past inflation.

If Congress had followed its own laws which require annual adjustments for inflation for most Federal positions to be set in accordance with the recommendations of various advisory boards, we would not be here. But almost every time an advisory board has recommended an increase for you and for others, year by year, just the inflation adjustment year by year, you have voted it down. Occasionally you have let it go through, and some of you felt you suffered political consequences or risked them as a result.

But the amounts recommended by those advisory boards year by year far exceed what you allowed to take effect.

Chairman GLENN. In your consideration of what a pay raise should encompass, did you consider the total compensation package? In other words, most people look at their jobs these days from a total compensation basis. They look at what they have in the way of health insurance. They look at what they have in the way of retirement pay. We happen to have very good retirement pay once you are vested after 5 years or whatever it is. It is a rather generous retirement pay. And there are other advantages here as far as looking at the total compensation package.

Did you do it on that basis or just on pay alone?

Mr. CUTLER. We did consider the existence on the whole of the rather favorable Federal fringe benefit package. We have no power to recommend changes in that package, and once again, those would take legislation.

But, no matter how favorable a package is, if it does not have the effect of retaining people in service, it is not worth much. If the average Federal employee, top-level Federal employee leaves in a year and a half, it does not much matter what the rest of his fringe package is.

If the Federal judge, who does have a very generous retirement package, leaves the bench in his 40's or in his 50's, it does not much matter what that retirement package is. His problem is how does he educate his own children this year.

Chairman GLENN. Was it also not within your purview, or under your ground rules, that you could make an option for us that would have de-linked Congressional pay from the rest of the Quadrennial Commission pay raises that I am sure we all agree should be made?

Mr. CUTLER. You are capable of de-linking yourselves, as I pointed out, Mr. Chairman, in how you decide to frame your resolution.

But we concluded that, given the existence of three equal branches, and given the change in the nature of the duties of a Congressman and the cost of performing those duties and still providing reasonably for your family, the added costs of spending 200 days a year in Washington, that a raise, a comparable raise for members of Congress is justified.

We also, of course, had in mind the practical political fact that historically, Congressional pay, Executive pay and Judicial pay have been linked. I think you deserve the same raise. But I have certainly lived in Washington long enough to know that any proposal to increase the other two branches without comparable increases in Congress would never fly.

If you decide that you have to make the sacrifice in order to preserve your acceptability to the voters, well and good. I hope you do not. But you are perfectly free, if you see the merit of the increases for judges and the Executive Branch officials, to let it take effect.

Chairman GLENN. I think the attitude of many members is to state the same thing in a different way, that is, before they can be a statesman, they have to get reelected.

Mr. CUTLER. Well, you do pretty well at getting reelected, and I think you will continue to do so.

Chairman GLENN. Under the Quadrennial Commission directions, does the President operate under the same restrictions you do as far as the options he can propose to the Congress—you are proscribed from doing certain things as you indicated a moment ago. Is the President more free to take your recommendations and do whatever he wants with them before submitting them to us, including considering other parts of our compensation package and options of de-linking and things like this?

Mr. CUTLER. He has the last word. He can second-guess us on anything we recommend. But he also has the statutory duty to recommend a pay level for these top 2,500 jobs for the 1989 budget--or, it is really the 1990 budget--that he submits in January of 1989.

I should have mentioned one other thing earlier, if I may, and that is cost. We have heard a lot of numbers about the high cost of this adjustment.

The actual cost for the 2,500 people who are within our responsibility, the 2,500 top people, is in a full fiscal year, $76 million after you have netted back the taxes on the additional increases. That is seven one-thousandths of one percent of the Federal budget. It is one-twentieth of 1 percent of the Federal deficit. The Pentagon spills that much, or the Government as a whole spills that much every single day.

Chairman GLENN. What percent of that would be strictly Congress? Do you have those figures?

Mr. CUTLER. Congress is roughly 600 people. It would be approximately one-fourth.

Chairman GLENN. One-fourth of the total?

Mr. CUTLER. Right. Now, it is true that, under your statutes, members of the Senior Executive Service and some others will automatically have present ceilings on their compensation changed. But even the entire package, if you distribute this cost throughout the Government, it is of the order of $300 million a year, and something like one-fourth of one percent of the Federal deficit.

And OMB has advised us, and President Reagan said in his message, that within the Executive Branch, the increases can easily be offset by savings in other personnel costs, and he thought that the same would be true in Congress.

Chairman GLENN. You mentioned the Constitutional requirement. There have been some opponents of the proposed pay raise who have said that the pay raise process itself is unconstitutional because it does not require an affirmative vote by both Houses of Congress.

Didn't the Supreme Court find the pay process to be Constitutional?

Mr. CUTLER. Well, to be technical about it, Senator Glenn, the Court of Appeals here in the District found it to be Constitutional expressly. Then certiorari, a petition for review by the Supreme Court, was filed by the critics, and the Supreme Court denied certiorari. That does not mean technically they affirmed the finding, but it does mean they did not think the case was worth hearing.

Chairman GLENN. What do you think of the argument that both Houses should be required to vote?

Mr. CUTLER. Well, I am trying to be practical. I think if both Houses were required to vote, we would see no pay raises for anyone in the Federal Government. I myself approve of this system. In fact, I was one of those on the 1985 commission who recommended the change which you made in 1985.

Chairman GLENN. Thank you. My time is up, my 10 minutes.

Senator Roth?

Senator ROTH. Thank you, Mr. Chairman.

Again, Mr. Cutler, I think we are fortunate in having you be willing to serve in a controversial spot where whatever you do is going to be criticized from one direction or another.

There was an article recently in Newsweek by Mr. Norman Ornstein in which he said that really the size of the increase makes no difference. History has shown that there is a lack of public support for pay increases.

Is that true in your opinion?

Mr. CUTLER. That is my view, Senator Roth. One of your colleagues said to me that when he was in Congress and voted for a 3 percent cost-of-living increase for Members of Congress, which had been recommended by an independent board, it almost cost him the next election to Congress.

I do not think the size of the increase matters that much. If I had to think of an explanation for public outrage on this, I would guess it has more to do with the level of compensation of the average American, which is, of course, considerably below the level of compensation of a member of Congress or an Executive Branch top official; and the fact that while he could be persuaded a judge needs more money and could earn much more money outside, and that a top scientist needs more money and could earn more money outside, you encourage him to think that Senators and Congressmen are people just like us, and why should you be paid any more than the average American,

That is what I think the problem is when, in fact, the cost of being a good Senator or a good Congressman is much higher than the cost of living in most cities and towns in the United States, and performing the sort of tasks the average American performs in living the life the average American lives.

Senator ROTH. Now, you argue that the increase with respect to Members of Congress is roughly 25 percent, if one takes into consideration honorariums—I believe that was your argument.

Mr. CUTLER. On average. For those heavy hitters who reach the maximum on honoraria, the increase is probably 10 percent at most—under 10 percent.

Senator ROTH. Has there been some discussion about other benefits. For example, members of Congress and new Federal employees are required to pay Social Security in contrast to the past.

It is also true that traditionally there has been a $3,000 deduction permitted members of Congress for living expenses in Washington.

What are the effects of those kinds of factors?

Mr. CUTLER. Well, the $3,000 deduction is like saying you can have $100 for living expenses. Three thousand dollars for housing in Washington is not going to take you very far per year. In fact, you are worse off than the average American.

The rest of us, if we have to maintain a second residence for business purposes—which is what you do—are entitled to a full deduction of all the reasonable expenses of that second residence. You have limited yourself to $3,000—again, I suppose, for fear of public criticism.

Senator ROTH. We all know that there is a lack of public support. What about other private sector organizations, labor, public organizations involved in public policy questions—has your recommendation found much support among these groups, including management?

Mr. CUTLER. We have very strong support from the Bar of the United States. All official Bar groups strongly support the pay increases for judges and, indeed, for all three branches.

We have very strong support from industry associations. We have very strong support from public citizen groups, such as Common Cause, from whom you are going to hear in just a moment. And we have very strong support from the Volcker Commission, which is a privately-created and privately-funded commission set up to consider various ways of improving the quality of our public service, including compensation. All of them strongly support us.

And I believe newspaper editorial support on the whole is running, I would guess, something on the order of 2-to-1 in favor of approval.

Senator ROTH. What about labor, has it taken any position?

Mr. CUTLER. I'm not aware of any specific labor support. I will say that leading trade union officials have served on previous commissions, including Mr. Meany, Mr. Kirkland and others, and they have strongly supported similar increases recommended by earlier commissions.

Senator ROTH. I may be wrong but I thought, according to your document, the unions had taken a position.

Mr. CUTLER. I have a list here and I'll check on it.

Senator ROTH. In any event, you recommend that a commission be created that would in effect have the authority to set pay raises without going to a vote of any type by the Congress; is that correct?

Mr. CUTLER. Yes. And the members of that commission would be presidentially appointed, subject to a Senate confirmation process.

Senator ROTH. Would it be the recommendation of the commission that that be set up for 4 years such as your Commission was, or would it be for a longer period of time, or did you get into that kind of detail?

Mr. CUTLER. No, we did not. Mr. Wertheimer, for Common Cause, I think, had advanced a similar proposal, and he may have more specific details.

I think the quadrennial process is a good enough process, particularly since other statutes are supposed to provide for annual cost-of-living increases to take effective inflation in the subsequent years, the intervening years between each 4-year commission.

So this commission could be appointed once every 4 years or, as in England, it could make annual recommendations.

Senator ROTH. But as I understand, your basic policy position is that the practices of the past have not enabled Government to recruit and retain qualified individuals, and that failure to give increases has in many instances resulted in increased costs because—particularly in the Executive Branch—the way around that problem is through consultants.

Mr. CUTLER. Through consultants or, in the case of scientists, retaining a university or some other research body that has its own scientists to do work for the Government, working side by side with Government researchers.

Senator ROTH. And the same is true in the Judicial Branch, is that you find that members of the Judiciary find it desirable to leave the service because they cannot send their children to college.

Mr. CUTLER. Yes. We have had—Judge Coffin will give you more details, but he has conducted a survey in which something like 30 percent of the sitting judges indicated that they would expect to leave before retirement day if salaries were not adjusted. And Chief Justice Burger told us he knew of one Court of Appeals position for which the first 10 people who had been offered the job turned it down.

Senator ROTH. Well, my time is up, but in view of the politics of it, it does appear that the only way to meet part of that problem is by separating the Congress from the Judiciary and Executive Branch. Would you agree?

Mr. CUTLER. It is within your power, Senator Roth, if you feel an increase for members of Congress will not fly, to allow the other two increases to go ahead.

Senator ROTH. Thank you, Mr. Cutler.

Chairman GLENN. Thank you.

Senator Kohl?

Senator KOHL. Well, I do not have any comment to make other than to expand on what Senator Roth says.

It seems to me that—and I think you have been involved in public life for a good long time—that we are part of a democracy here, and what the people out there think is important to us, not just because we are out there looking for votes, but because we, after all, are responsive to the people whom we serve, and that is what we are supposed to do.

And I think you might have anticipated, or perhaps you did, that a 50 percent pay increase for the members of Congress was going to create and has now in fact created, a tremendous furor, understandably.

People vote themselves a 50 percent pay increase not at all. It just does not happen. And I think that it might have been clear to you, and perhaps it is clear to you today, that this was the kind of an issue that would create a tremendous uproar.

I wonder if you had to do it over again if you would not do it in a somewhat different fashion? I think that it is too much for us to ask our constituents to accept a 50 percent pay increase particularly at a time when we are asking everybody, or should be asking everybody in this country, to make the kind of sacrifices that are necessary.

Perhaps you might have recommended that we split it off, as we are talking about right now. I wonder if you had it to do over again today, whether the things that have developed since this pay increase has come out into the open, Mr. Cutler, I wonder if you would not have thought to do it in a somewhat different fashion?

Mr. CUTLER. Senator Kohl, of course, we thought about that. Our responsibility is to recommend what we think the appropriate salary levels should be.

We did what virtually every other preceding commission asked to consider the appropriate salary levels, did, and that is to shoot straight as to where we thought these salaries ought to be.

At the same time, we recommended an end to honoraria in all three branches of the Government. And, as I said, for the heavy hitters, the committee chairmen and others who are right up there at the maximum, especially here in the Senate, the increase is probably—if you give up the honoraria, the increase is probably in the order of only 10 percent.

If we had recommended a 30 percent increase instead of a 50 percent increase, to begin with, we would not have made up for erosion by inflation since 1969. And, secondly, we think, to the extent we are capable of exercising political judgment, the uproar would have been every bit as high.

Remember the uproar over a 3 percent pay increase for cost-of-living just a year ago, which I believe you took away from yourselves.

Senator KOHL. Thank you, Mr. Chairman.

Chairman GLENN. Senator Stevens.

Senator STEVENS. Well, I, too, congratulate you, Mr. Cutler, again.

I will be very brief because I would like to hear these other witnesses—I am sure you would, too.

I just cannot forget the fact that, as President Johnson left office, he recommended a 50 percent increase. He actually adjusted part of it and made part of it into a living allowance which Congress knocked out. But he suggested, and Congress put into effect his increase. There had not been a change for a substantial period, and he knew it was out of balance. Not one member of the Congress was defeated because they followed the President's recommendation. I think we do get this uproar every time someone suggests changing Congressional salaries.

But I have just gone through this list. Since 1970, each year Congress has made changes, salary increases, to adjust for inflation. Only four times has Congress allowed those increases to go into effect.

On three occasions, Congress tried to play catch-up and make adjustments. I am sad to say that on only one occasion was that in response to the Quadrennial Pay Commission's request.

I have a question for you on your comment about do we think for once and for all we could take care of this problem if we created an independent commission. Unless we have a Constitutional amendment, there is no way that I know of that we can prevent Congress from legislating on the subject of Judicial, Executive and Congressional pay. Even your suggestion would not leave that independent commission's recommendation immune from demagoguery, would it?

Mr. CUTLER. It would always be open to Congress, Senator Stevens, in the absence of a Constitutional amendment to change salaries by initiating a new statute and passing it. That is perfectly true.

But one of the difficulties of the present system is the fact that the very statute that authorizes the President to recommend increases says they shall take effect unless overruled by Congress. It is sort of an invitation to vote which you find very difficult to turn down, especially here in the Senate.

If the statute itself left the judgment with the commission because of your inherent political conflict of interest which, I would submit to you, is exactly like the inherent political conflict of interest that led to the independent counsel statute, then, while it is true that some among you could offer a statute changing Government salaries, I think the chances that the recommendations would take effect most of the time would be higher.

Senator STEVENS. I do also thank you for your comment about the 1985 change made by Congress. I was chairman of the subcommittee here at that time, and was the person that responded to the request from the Commission to meet the problem of the *Chadha* case of the Supreme Court in assuring that this Quadrennial Commission action was Constitutional in the sense that there could not be a Congressional veto of Executive action.

There have been some people that have alleged that this was a conspiracy to try and make the recommendations of the Quadrennial Commission immune from Congressional action. I am sure that that is not the case. That recommendation did come from the Commission, did it not?

Mr. CUTLER. It came from the Commission because the present statute, which was in effect a Congressional veto statute, was unconstitutional in light of the *Chadha* decision, and that was the advice we received from the Department of Justice.

Senator STEVENS. And following that, we did correct it because even the Judicial salaries would have been subject to a Congressional challenge had we not done so.

Mr. CUTLER. That is correct.

Senator STEVENS. And as I perceive this action now, there is no question but if the matter is not voted on in the House, at least the Judicial salaries will become effective on February 9. The others

are subject to challenge by the Congress through the exercise of its legislative power. But we Constitutionally have no power to change and roll back the Judicial salaries.

Mr. CUTLER. If the House does not vote—let us assume the Senate votes a resolution of disapproval but the House does not—the salaries for the judges, in my view of the statute at least, would become effective on midnight, February the 7th, which is the end of the 30th day beginning with the day that President Reagan submitted the recommendations to you.

Once that happens, Congress could not legislate a cut in the salaries of the judges. You would still be free to legislate a cut in your own salary or the salaries of Executive Branch officers.

Senator STEVENS. I am pleased to hear you say that. I argued it long and hard with people in the Senate hierarchy here that the expiration was the night of the 7th, but they do not believe it.

Lastly, the figures we hear about pensions for Congress are based on the old pension system. And every time we read about these former members of Congress that get so much money back compared to what they contributed, it is on the old civil service system. We reformed that. Congress followed my suggestion. It was my bill, I created that new system. And it reduced the cost to the taxpayers by some $5 billion over a 5-year period.

I wish someone would look to what we have done to reform these systems, to reduce the cost, but we get no credit for that when people look at the history of these people who retired 20 years ago. They are retiring under an old system. Incidentally, even the civil service contribution was increased after those people retired. And now we do not have that kind of a system. We have a Social Security base and a pension system, and then, on top of that, a contributory plan, and the taxpayers pay only for Congress, as they do for all civil servants, that middle portion of a pension contribution, substantially less and just as beneficial to the employee.

I am astounded at the attacks we get based upon the benefits from people who know better and still use those old figures.

Again I thank you.

Mr. Chairman, Dr. Cutler—I thought I made a mistake, but it is right—has the honor of being the father of one of our most leading judges in Alaska; his daughter is a judge in my State.

Mr. CUTLER. And she is holding court even at 60-below at the moment. [Laughter.]

Chairman GLENN. We hope.

Senator Sasser.

Senator SASSER. Well, thank you very much, Mr. Chairman. I want to compliment you, Mr. Chairman, for convening these hearings this morning. I apologize for being late in my attendance. We have a hearing going in the Banking Committee on the whole question of FSLIC and the savings and loan crisis, and there, we are dealing with really big numbers, $100 billion, give or take a few, and that is very serious dollars.

Mr. Cutler, I also want to express my appreciation to you. Whether we agree with you on every facet of your report or not, I think you have rendered a public service in what you have undertaken in focusing public attention on the whole controversy of

whether or not compensation is adequate for persons in the upper levels of the Federal Government, including the Federal Judiciary.

Mr. Chairman, I am going to have to return to the Banking Committee shortly, and I will not be here to hear the testimony of my distinguished friend, Judge Leon Higginbotham. But I do want to welcome him to the Committee this morning. Judge Higginbotham and I have served together, he with great distinction on the Board of Regents of the Smithsonian Institute for a number of years. And I hasten to add that neither Judge Higginbotham nor myself receive any compensation for serving on the Board of the Smithsonian unless you count——

Mr. CUTLER. Not even an honorarium.

Senator SASSER. No, not even an honorarium, Mr. Cutler. We do get, I think—and Judge Higginbotham can correct me if I am wrong—I believe they buy us four meals a year as a result of serving on the Board.

Mr. Cutler, frankly, I am going to vote against the pay increase for Congress when it comes before the Senate. I have read your report, or portions of it. It makes a very convincing and persuasive case. But I am persuaded in my own mind at this time it is simply too much given the public climate.

Now, what is your recommendation with regard to whether or not we should decouple the salaries of the Federal judges and other top Federal officials from the pay that the Congress gets in the event—well, just let me ask you that question. What is your view as to whether or not we should de-couple?

Mr. CUTLER. They are not legally coupled in any way today, Senator Sasser. You may disapprove any of our recommendations. I would submit you could even disapprove some of them in part if you feel you should get a different salary for members of Congress. I think you could word a resolution of disapproval in a way that would do that. It has to be signed by the President anyway and it would have the force of law.

But there is nothing except the notion of holding, if you think raises are deserved by the other two branches, there is nothing other than the notion of holding the other two branches in hostage or, as I said earlier, a "dog in the manger" attitude. There is nothing that requires you to couple disapproval of the judges' increase or the Executive Branch increase with disapproval of your own increase.

I myself believe that because we have three equal branches, and because we live in a practical political world, the three levels should be approximately the same. And I think the case, certainly the need case, for young members of Congress with children to educate, especially those who have to maintain residences in Washington because they live too far away, is compelling, it is very compelling—just as compelling, maybe not as important from a public interest point of view, as the need to keep all judges on the bench for their lifetimes to preserve their independence and public acceptance of their independence. And that takes paying them enough so that they can educate their children.

Senator SASSER. Something that has occurred to me over the years, particularly in watching young Congressmen as they come to Washington and are confronted with the cost of housing here in

this city, which is probably one of the highest-cost housing areas in the country, surpassed by only one or two cities in the United States, has been the thought that perhaps we would be better advised to give Congressmen some sort of housing allowance, a subsistence payment perhaps similar to the one that we give to the military.

This whole question of compensation and what Congress should be paid has been a bone of contention ever since the Republic—ever since we adopted the Constitution over 200 years ago. And I thought that that might be a way of, in some way, giving Congressmen adequate compensation, or defray their living cost, their legitimate living cost associated with service in the Congress, without actually raising their pay.

Was any consideration given to perhaps subsistence payments for housing here in the District of Columbia?

Mr. CUTLER. Once again, while you are always free to recommend new legislation, it was not within our charter to decide whether there should be a separate housing allowance. I do not think it makes much difference; it still comes out of the Federal Treasury. The simplest way to handle the problem is to increase the salary and let members decide how to spend that additional salary.

I have heard suggestions that the Government ought to build a few apartment houses here for members of Congress, but it seems to me that is the last solution you might want. It would be one more form of public housing.

Chairman GLENN. Gulag D.C. [Laughter.]

Mr. CUTLER. You must see enough of each other all day, anyway.

Senator SASSER. Well, thank you very much, Mr. Cutler.

Thank you, Mr. Chairman.

Chairman GLENN. Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Mr. Chairman.

First, let me thank you for holding these hearings; to Lloyd Cutler and to our other witnesses for their participation in a very difficult task. It is a pretty thankless task, too, obviously.

I, like a number of my other colleagues, oppose this pay increase. I do not see how we can possibly justify it in the face of the deficits that confront us. I think our effort to address the deficits is going to require some form of sacrifice, either in terms of people currently receiving some Federal benefits which will be cut in order to address the deficit, or possibly in terms of some targeted tax increases. Either way, whether it is on the spending side or on the tax side, people are going to be asked to either get by with less or to have their benefits cut. I do not see how we can maintain a leadership role in addressing the sacrifice involved in deficit reduction if we approve this kind of a wage increase. I oppose it principally for that reason.

I also have trouble with the linkage between the honorarium issue and the pay increase issue, and I would like to just focus on that for a moment with you, Mr. Cutler, if we can.

From what I read, I think you have a lot of trouble with members of Congress accepting honoraria. Obviously, it has troubled me a great deal. I think it creates an impression that we are benefiting privately and personally in ways that we should not. We should not be putting in our own pockets, I believe, money from persons that have legislative interest before us. It just creates the wrong appearance that somehow or other we are on the payroll of other than the taxpayers.

You have recommended that we eliminate honoraria in some kind of an exchange for a pay increase, that it be linked. My question is this: If it creates a bad appearance to accept these honoraria, why should we not prohibit them in any event with or without a pay increase? If they are wrong for whatever reason, why not prohibit them, and why do we have to be rewarded for prohibiting them?

Mr. CUTLER. Oh, there is no question, Senator Levin, in my view that you should prohibit honoraria for all three branches, whether or not you vote to disapprove the pay increase for yourselves. There is no doubt about that.

Our responsibility was to recommend appropriate levels of pay. That is how we get into the game. We were not a commission set up like the Ethics Commission that has just been created, on which I am also going to serve, to decide what the appropriate ethical standard was.

But when we got to the subject of congressional pay and saw that you fellows—if I can say it with respect—have allowed yourself a pay increase that is not available to the other two branches as a practical matter, and that some of you are taking in as much as $36,000 a year above your salaries, that if we are going to pay you what we think you are worth, you ought to give up that additional compensation you have allowed yourself to take because you yourselves recognize that your own salaries are inadequate, even if you do not vote that way.

Senator LEVIN. All right. I agree with that. But the other side of that coin is that you would recommend that we not accept honoraria even if this pay increase is defeated.

Mr. CUTLER. Absolutely.

Senator LEVIN. All right.

Mr. CUTLER. And I think public opinion will compel you to do it.

Senator LEVIN. I agree.

Mr. CUTLER. There are some members, I know, who think they are not going to have to give up the honoraria.

Senator LEVIN. I happen to agree with that, but I just want to make sure that your opposition to the acceptance of honoraria is not connected, then, to the pay increase. You would oppose acceptance of honoraria even if we reject the pay increase.

Mr. CUTLER. Absolutely.

Senator LEVIN. Now, when you figured out and analyzed pay, did you——

Mr. CUTLER. If I could just put one caveat there. Judges, for example, today can go to a law school and give, let us say, the Oliver Wendell Holmes lecture and receive the standard honorarium for giving that lecture of $5,000 a year. And the lecture is later printed.

We are proposing that judges give that up if Congressmen also give it up. If you do not give it up, I question whether those modest honoraria for judges which do not come from people who are trying to get them vote one way or the other should be abolished.

Senator LEVIN. Okay. With regard to the Executive Branch people, you have looked at the questions of recruitment and retention relative to current pay levels. What surveys are available to support your conclusion that there are retention problems or recruitment problems in those positions?

Mr. CUTLER. Well, when you speak of surveys, the only survey number I can give you is that the average time in office of the top level Federal appointee for whose pay level we are responsible is 18 months.

Senator LEVIN. Has that gone down, for instance, over the years?

Mr. CUTLER. Yes, it has. Quite considerably.

Senator LEVIN. So you can show a direct correlation between pay and retention by looking at the length of service over years as it relates to pay levels in constant dollars?

Mr. CUTLER. Well, it is a statistical correlation.

Senator LEVIN. That is what I mean. But you can show that statistical correlation?

Mr. CUTLER. Yes. And I think there is plenty of anecdotal testimony that that is why people leave; that they cannot afford to stay even in a junior Cabinet position more than a year or 2, particularly when most of them earned considerably more before they came to Washington and can resume earning it again.

Senator LEVIN. Do you know if the Bush transition team is having any difficulty in recruiting people for those positions?

Mr. CUTLER. I do not know whether they are having trouble in recruiting the people they want for those positions. It would not surprise me if they were. But the more important question is how long they would retain those people. I referred, before you came in, Senator Levin, to the consultant problem at the Department of Defense, which I would relate directly to the fact that the civilian procurement officials in the Defense Department are so underpaid compared to what they could earn as consultants outside, and still be compensated eventually by the taxpayer, that that is why we have the consultant scandal.

Senator LEVIN. Have you checked on the recruitment issue? Have you checked with the Bush transition team to see if they have had any difficulty recruiting qualified people for those jobs?

Mr. CUTLER. No, but we do know that the Bush transition team and President Bush himself support these increases.

Senator LEVIN. I think it would be useful to get a statement from the Bush transition team as to whether or not they are having any difficulty recruiting highly qualified people for these positions. I think we have made an effort to get that information, so far without success. I think it would be useful—and I will say this publicly—for the Bush transition team to tell us whether or not they are having any difficulty recruiting highly qualified people.

The retention issue is a different issue. I agree with you. There you can show something statistically, and we can look at those statistics. But on the recruitment side, I have never seen any shortage

of highly qualified people applying for executive-level jobs—in any administration, by the way, not just the ongoing transition.

Mr. CUTLER. May I suggest, Senator Levin, that we have the best possible people in the Executive Branch today.

Senator LEVIN. I know, but I think that has to do with the selection by the people making the selection. I am talking about the number of qualified people applying. I do not think there is a shortage of highly qualified people applying for those jobs.

Mr. CUTLER. There certainly is for scientific researchers.

Senator LEVIN. Oh, there is, indeed. I am not talking about those positions. I am talking about these higher level executive positions. On the scientific side, as our Chairman and others have pointed up, there is a real problem with retention and recruitment because of pay levels.

Just quickly on the Judicial side of this issue, a number of Judicial salaries are linked to your proposal, including the D.C. Superior Court judges. These D.C. judges would be getting a huge pay increase, and as a result, would be by far the highest paid local trial judges in the country just because their pay is linked to the Federal judges' pay. Did you make a recommendation about de-linkage so we do not have that anomaly where we have got D.C. judges handling trials—you know, just the regular trial judge—getting these huge salary increases? Did you make any recommendation regarding de-linkage?

Mr. CUTLER. Those linkages are statutory linkages over which we have no control.

Senator LEVIN. Did you recommend de-linkage?

Mr. CUTLER. No, we did not recommend de-linkage because salaries for State court judges in highly populated States, with living expenses comparable to those here, are of the same order of magnitude.

Senator LEVIN. You mean the trial judges in most of our States are getting $135,000?

Mr. CUTLER. In the City of New York, I believe they are getting——

Senator LEVIN. Well, other than the City of New York, is a typical trial judge salary $135,000?

Mr. CUTLER. Yes.

Senator LEVIN. Not where I come from, in a populated area, nowhere near that. I think this is a real anomaly that we have got to look at.

My time is up. We can perhaps come back to that.

Chairman GLENN. Thank you, Senator Levin.

Senator Wilson, and before he starts, we have taken a long time this morning. More members showed up than I anticipated. I left the questioning at 10 minutes each this morning. On the next round, we will go to 5 minutes, just so everybody is aware of that in their planning.

Senator Wilson.

OPENING STATEMENT OF SENATOR WILSON

Senator WILSON. Thank you, Mr. Chairman. And I apologize. Having to be in three places this morning, I was deprived of listen-

ing to Mr. Cutler's testimony. I had to be at the Tower hearing and also had to introduce Bill Riley at his confirmation hearing.

Mr. Cutler, let me join the swelling chorus of praise for your public service, and I say that in all sincerity. By way of a brief statement, I think that, obviously, Congress should vote on this issue. I personally think there should be a de-linkage, that Congress should be set apart from the Judiciary and from the Executive. And it is precisely because we do have to vote.

I think that Senator Stevens made a number of compelling points in defense of the recommendations as they relate to the Judiciary and to the Executive Branch. As I listened to the tail end of Carl Levin's questioning, I might respond that in a major urban area, Los Angeles, judges are not paid that highly. And as someone who spends a great deal of time seeking to recruit for the Federal Bench, it has been a source of very great concern to me that we have had any number of people eminently qualified to give distinguished service on the bench tell me and tell my screening committee that they really are not in a position to leave private practice.

And that has been particularly true, I might add, when we have been seeking members of minority groups who are, in many instances, distinguished trial practitioners, distinguished counselors, people who could make an enormous contribution, who would be eminently desirable additions to the Federal Bench: They have said, "I simply cannot afford it."

That is, I think, more true in the case of a number of minority members of the Bar who have not come to life with any kind of inherited wealth. So the fact of the matter is I have found that, in my State, the State's compensation of Superior Court judges, which is an area in which we are able to find eminently talented and experienced candidates for the Federal Bench, we have had a situation where it has been difficult to recruit because, with respect to retirement benefits, there is a much better retirement system for State judges than there is for Federal.

Having said that, I will tell you that I, too, intend to vote against the recommendation as it relates to the congressional pay raise. And let me say it as simply as I can. The issue is not whether or not there is need. I can think of a number of members of Congress for whom there is a very great need, particularly younger members in the House, those with young families, those who face three or four college tuitions, those who face the dual expenditure of living with a family in Washington and maintaining some presence within their district. So the question is not need. There are many who have need.

The question is not merit. In my judgment, there are many in Congress who would earn the raise that would be given them. There are some who would not earn it. But for the most part, I think they would.

So the question is neither need nor is it merit. We are in a special situation. We are lawmakers, but, really—and certainly in the current instance—the major responsibility facing members of the Congress is to set and keep priorities. And at a time when we are compelled to deal with a deficit and the virtual certainty that we will have to cut certain programs in order to accommodate the need for other new and more important programs, it is very diffi-

cult, I think, to make the argument that a pay increase for Congress is an urgent, compelling, public priority.

So on that basis, I will not ask you what would be a rhetorical question. I have glanced through the Act that enables and authorizes the activity of the Commission, and nowhere in that Act are you asked to look to considerations of competing public priorities. That is not your charge. You have performed your charge, I think very, very well, with considerable dedication, you and the members of the Commission.

But your job, I submit, is different from ours. Ours is to set and to keep those priorities. So even in the face of a very systematic examination and comparison, both historically and in terms of present need, I think you have responded to the question of need, the question of merit; but to me, those are not the questions that face Congress in determining its own raise. There is a very hefty raise portended in your recommendations, and at a time when we are compelled to tell others that we are going to have to cut back on services that are not undesirable but just less desirable than some of the other things for whom they will have to make way.

I just do not feel that we can say a raise, and certainly not one of this dimension, is an urgent public priority. So I will oppose the raise for Congress, with some misgivings as it relates to those in need. I will support action that will permit the raise to go through for members of the Judiciary, because it seems to me that if we do not do that, I will continue—as will many others—to find great difficulty in recruiting for the Federal Bench, and I think that that is penny-wise and pound-foolish.

But I will not bother to ask you the rhetorical question because I know the answer.

Mr. Chairman, I would simply say that I think that tomorrow, I believe, Senator Pressler is before us. It is my understanding that it will be in order for us to offer amendments here in the Committee that would change his legislation and restrict its focus, either here or on the floor or at some point. It is my view that we ought to separate Congress from the other recommendations.

Mr. Cutler, I thank you for one more, I should say only your most recent example of dedicated public service.

Mr. CUTLER. Thank you, Senator. I, of course, respect your views on this subject. I hope you and the Chairman and others, if you should feel that way, will see to it that the resolution of disapproval that comes for a vote is limited to members of Congress or, at the very least, that there are 3 separate resolutions.

I would make the case that in the Executive Branch the increase does not have a deficit-creating effect. It will be offset by other personnel cuts. The same could readily be done in Congress, I would submit to you. But even if you took the gross amount of the increase for Congress——

Senator LEVIN. Well, I have less myself, but I did not think that was possible under the Constitution.

Mr. CUTLER. It is not just your taking less, but congressional pay is a very small part of even the congressional budget. There are other personnel cost savings that you could achieve. But even if you took the gross amount of the increase for Congress, which is roughly one-fourth of our total increase, it amounts to something

like one-eightieth of one percent of the Federal deficit, taking the deficit at $150 billion. So we are not really talking about a deficit-creating decision, except in the most symbolic of all senses, and that is why you have this conflict of interest.

Senator LEVIN. Thank you, sir.

Thank you, Mr. Chairman.

Chairman GLENN. Thank you, Senator Wilson. Thank you, Mr. Cutler. We may want you to respond, if you would, please, to written questions that other members may submit later on as we review the testimony. We would appreciate your response to that so that could be part of our record, also.

Mr. CUTLER. Thank you very much.

Chairman GLENN. Thank you very much.

Our next witness is Fred Wertheimer, President of Common Cause.

Mr. Wertheimer, welcome this morning. We welcome your testimony, either in its entirety or an abridged version. In either event, the entire statement will be included in the record.

TESTIMONY OF FRED WERTHEIMER, PRESIDENT, COMMON CAUSE

Mr. WERTHEIMER. I appreciate your comments, Mr. Chairman. I do not think anyone would welcome my testimony in full, and I will be very happy to put it in the record and summarize, if I could.[1]

Chairman GLENN. Fine. Thank you. It is no reflection on you that we are going to go to a 5-minute question period for each member on this next round, because we are tight on time. It is almost 11:30, and we took a long time with Mr. Cutler there. But it was all very good. Thank you.

Mr. WERTHEIMER. Thank you.

Mr. Chairman, members of the Committee, on behalf of Common Cause, I appreciate this opportunity to appear before the Committee.

It is our view that full-time public officials who have the responsibility for leading and governing the Nation should be adequately and fully compensated by the public to whom they are responsible. We also believe that public officials should not receive private fees and benefits from individuals or groups that may have matters pending before the Government.

We support the salary increases for top-level Government officials in all 3 branches, recommended initially by the Quadrennial Commission and then proposed by President Reagan and endorsed by now-President Bush. We also strongly urge the Congress to move immediately to enact a comprehensive statutory ban against honoraria. To abolish honoraria effectively, Congress must not only eliminate fees paid to members for speaking, writing or making appearances, but also must identify and close off other means by which special interest groups now provide financial benefits for members of Congress or may attempt to provide benefits to members in the future in lieu of honoraria.

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[1] See 109.

If honoraria payments are banned without addressing other forms of special interest benefits, these other forms can be expected to pick up precisely where the speaking and appearance fees left off.

We realize that the proposed salary increases are large. As Mr. Cutler pointed out, the increases are intended to make up for the many years in which Congress has been incapable of enacting appropriate regular salary adjustments for itself and other top-level officials, causing salaries to erode by some 35 percent over the last 20 years. This is due, I believe, in large part to the fact that congressional actions on congressional salaries are inherently self-serving. Members of Congress are put in the position of "feathering their own nests" whenever they are asked to be involved in the process of increasing their own salaries. I do not think this is an issue of cowardice or courage. I think this is an issue of members of Congress being put in an untenable situation.

As a result, we have recommended a process that would remove Congress from the process of setting its own salaries as the really only long-term solution to avoid what we go through: salaries are not adjusted for long periods, and then all of a sudden we face large increases in very intense periods. That is not the best way, from a public policy standpoint, to deal with this, but we are faced with it because of the inherent difficulties that each of you have when you are asked to sit down and say: I am going to decide this amount of money is how much I earn.

Again, as Mr. Cutler pointed out, that is not the way the system works in the rest of our society, and I do believe that it is a basic conflict of interest Congress is in when it is asked to make that judgment.

Regardless of whether or not the salary adjustments take effect, we believe that Congress must move to abolish the honoraria system immediately. Now, we do not believe you can provide congressional increased salaries on top of the tainted honoraria system that exists now. Therefore, we do not think the salaries should be given for members of Congress absent dealing with the honoraria problem. The reverse of that is not true. We believe honoraria have to be dealt with regardless of what happens on salaries. They have to be dealt with now. I was interested in hearing Senator Levin's comments on this. I just want to note for the record that if, for some reason—and it would be unfortunate in our view—salary increases do not go through, we will certainly be looking for members of the Senate to help lead the fight to get rid of honoraria. Members of Congress today, as we know, received almost $10 million total in honoraria in 1987. It is a large part of the process today.

On the salary question, we believe that top Government officials in all three branches should be paid appropriate salaries that reflect their vital responsibilities as leaders in our society. As I said earlier, these are the people in whom we have invested the responsibility for governing and leading the country. These are very important positions in our society. And in our view, the salaries, the compensation, should reflect the importance of those jobs.

Compensation cannot and should not be competitive with similar leadership positions in the private sector. The opportunity to serve

this country in a high-level Government position is a special privilege not awarded to most citizens. The notion that this kind of public service in any of the 3 branches constitutes a personal sacrifice is one we categorically reject. We understand there are costs, economic costs. Those are similar questions that others face in our society. We do not believe that the highest levels of Government, the privilege to serve in those responsibilities, should be looked at by anyone as a sacrifice. And we do not consider it a sacrifice to be serving in these positions at the present salaries.

At the same time, the average family income is not an appropriate yardstick for determining the compensation levels of our Nation's leaders. And it is quite true that part of the intensity occurs around this issue because of the fact that people do tend to look at these salaries in terms of their own salaries. That is simply not an appropriate way for us to set the salaries of the top officials of our Government.

With regard to the honoraria issue, this process is coming to an end; it must come to an end. The disregard, the contempt in which the honoraria system is held throughout the Nation is unmistakable. You can see it in the number of newspapers that have editorialized for an honoraria ban, as well as the harsh terms they have used to describe the practice.

As I said, these editorials are quite harsh in their description of this system. Various editorial writers around the country have described the system as "legalized bribery," "legislative prostitution," "shameless pandering to special-interest payoffs," "bag money," "lobbyist payola," "a low-life practice," "appalling," and "a disgrace." And I have left out the harsher ones.

I think the conflict of interest inherent and the appearance of conflict, in the honoraria arrangement is widely recognized in these editorials. I quote from The Denison (Texas) Herald: "The spectacle of lawmakers pocketing speaking fees and the voting on bills that affect these [special] interests is an intolerable scandal."

In order to abolish honoraria, as I have said, one must deal with honoraria and other kinds of professional fees. Now, the Senate does have rules dealing with professional fees and serving on boards of directors. The House does not. The House has a percentage limit on total outside earned income. The Senate does not. We are going to need restrictions that prevent the honoraria money from the next day showing up in different forms, which means that you will need a comprehensive package.

We have set forth our views on that in the testimony. In our view, one of the areas that has become a growing problem in the Congress is reimbursement for travel expenses, where we have seen too many examples now of those reimbursements turned into the equivalent of paid vacations or extended vacation trips. And as part of this process, there is a clear need for strict regulations on actual and necessary reimbursements to stop the abuse that is going on now.

We also believe that the grandfather clause which allows special interest groups to give money to members of Congress that ultimately can be converted to personal use if they have been here since before 1980, because members can convert to personal use,

that provision has to be repealed. Because, otherwise, you really have a potential form of deferred special interest income here.

The basic point I would make is that there is a very important job to be done on dealing with the private financial benefits that members of Congress are presently receiving. There is a need for immediate action in this Congress, in this year, in the coming months—in the coming month, hopefully; sooner, if possible—to deal with this. This practice is not credible in the country any more, and it is undermining the Congress and undermining this institution.

As the testimony also points out, we believe that these changes have to be made by statute. The rules process has not worked. It has not worked from a compliance or enforcement standpoint, and it has not worked from the standpoint that the rules have been repeatedly changed when it comes to issues of earned income.

In conclusion, I would again reiterate we think the salary increases that are pending for all three branches of Government should be approved, should take effect, and we believe that the Congress must move immediately to deal with a very fundamental ethics problem—the role that private fees being paid to members of Congress are playing in this system.

Thank you very much, Mr. Chairman.

Chairman GLENN. Thank you very much, Mr. Wertheimer. I agree with you completely on the honoraria. I think whatever happens on the pay increase, we have to deal with the honoraria problem.

Let me ask this. We have a number of factors that would seem to make recruitment and retention of good people difficult: the diminished public prestige of government service; in some cases, significant financial disclosure requirements; and the potential for more extensive post-employment restrictions that might diminish the earning power of federal officials if they leave public service. In addition, there are other private sector advantages such as shorter work hours, better fringe benefits in general. Then you tack pay on the top of all of that.

Is pay really the determining factor here of recruiting and retaining people, or are all these other things playing a bigger role in people's willingness to serve in top Government positions?

Mr. WERTHEIMER. Well, I guess I share Senator Levin's view earlier about pay and recruiting when you are talking for top Government officials. I think the issue may arise in the retention area, less likely to arise in the recruiting area for these jobs.

I do not know the answer to that. I do not know that you can make that kind of judgment. I think the laws and rules that we have put on the books to protect the integrity of the Executive Branch, the Congress, are very important. I think what happens over periods of time is, if they are not enforced, if there is a sense that anything goes, they break down, people start to set their own rules. I think we have been living in that kind of society and atmosphere in Washington in the 1980's. And when you reach that stage, you have to reaffirm what is important. You have to make clear that the rules matter.

Now, I think what happened in the last Congress with the passage of that "revolving door" bill was very important, and I do not

think there was any justification for its veto. We were very pleased to see that the Senate leadership has given that Senate one number as a sign that it is on a fast track. I think what President Bush has done in the first week is very important.

Attitude matters when you are dealing with ethics, a sense that this is going to be important, that there are high expectations, matters. But I do not buy the argument that we have put too much of a burden through the ethics rules and guidelines on service in the Government. I think the burden has come from the breakdown in compliance and the bad publicity that has correctly accrued from failures to comply. I have said before I think the attitude of the past administration on ethics matters set the whole tone for the country and this city, and it did very serious damage.

We now are entering a new period. We have an opportunity for a new era in ethics, to strengthen the rules, to get enforcement. And I think you have to have those rules. You cannot look at those rules as a problem for recruitment. So I think the pay question is important. You cannot single it out, but I go back to our view. Pay our top public officials salaries that reflect that these are some of the most important jobs in the country. If people are not doing those jobs properly, find others to do them.

Chairman GLENN. You link honoraria and the pay raise; that we should do away with the honoraria or not get the pay raise, I believe was your statement or words to that effect. And while we do not have the honoraria knocked out yet, and we are asked to deal with the pay raise.

Would you vote for the pay raise and just trust that the honoraria ban will be passed later? I have a little trouble myself making that leap of faith.

Mr. WERTHEIMER. I would not talk of leaps of faith here, Senator. But it is our view that we do urge support of the pay increase by not voting it down during this 30-day period. We then urge the House and the Senate to move immediately to act on the honoraria question, within a matter of hours or days. And we think that is doable.

As you well know, it is not within our purview to set the process and the timing around here, but we do think if the pay increase does go into effect, the capacity to get honoraria repealed immediately will be there.

Chairman GLENN. Senator Roth.

Senator ROTH. Thank you, Mr. Chairman. Thank you for your statement, Mr. Wertheimer.

Senator ROTH. Like a lot of Members of Congress, I find it very difficult to vote for a pay increase for yourself, whether it is large or small, whatever the circumstances may be. And I must say, in the many years I have served here, I have never found a situation where it seemed to be particularly opportune to vote for your own pay increase.

Now, some people argue—and I guess there is some real merit to it because I have respect for those who say it—that by failing to vote we are ducking our responsibility. But I am more of the school of what I think it was Howard Baker who said that: "I am not at all certain but that the Congress of the United States is institution-

ally incapable of setting its own salary." There is a lot of truth in that.

So I have some interest in your suggestion of an independent commission. You may have heard me ask some questions of Mr. Cutler. I wonder, have you gone beyond the idea? For example, should it be a permanent commission? Should the appointments be just quadrennial, as in the immediate case? Or should they serve over a lengthy period?

Mr. WERTHEIMER. I do not have a specific answer at this time, Senator. I think in the long term, the best result would be if we could set up some kind of process of regular, modest adjustments for these salaries on a regular basis. That is the way our society works, for the most part. Most people live in a system where you get an ongoing regular sense of adjustment now. Sometimes you do not get it, but it tends to take place in our system. It does not happen here. That is why these things build up over a period of years.

So I think you are put in an impossible situation. A number of members do not particularly view us as being sufficiently sensitive to positions that members of Congress are in. And it is true that we raise a series of concerns about ethics and other issues and do get into some strong differences with you.

That, for me, allows me to feel very strongly when I say on this one I think you are in an untenable situation. I do not think you should be voting on it. I do not think there is any way to vote on it without getting into this inherent conflict. You should get out of it. You can do it by a commission. If you repealed the 30-day provision, you would be out of the setting of salaries. If you simply took away this automatic 30-day provision, the President would set the salaries.

Now, you can come up with some form of automatic or regular modest adjustment that takes you out of it. But until Congress gets out of this process, we are not going to be able to set on a long-term basis salaries for our Government officials in a fair and orderly and appropriate way.

Senator ROTH. I have here a copy of a letter from Archibald Cox who I think was still Chairman of Common Cause.

Mr. WERTHEIMER. Yes.

Senator ROTH. He signed it as a member of the Committee for Quality Management and Compensation, which endorsed the increase in compensation. I thought, even though one may disagree with it, that a number of the statements made by members of that Committee on the pay increase were interesting, particularly in light of some of the comments made here today.

For example, Lane Kirkland, President of the AFL-CIO, in supporting the pay raise, said, "Working Americans recognize fully that the salaries required to attract the top people to the Federal Bench, Executive Branch, and Congress are several times what they might expect to earn. But they recognize something else: Government on the cheap only benefits people who do not depend on Government for equity and fairness."

I thought it was also interesting that Rev. Benjamin L. Hooks, Executive Director of National Association for the Advancement of Colored People, in supporting it also, said, "The poor, the disadvan-

taged, and minorities do not have the resources that are available to wealthy Americans. The wealthy have individual power, the resources to hire the best lawyers or lobbyists. The least favored must turn to Government when they are victimized by the system in the workplace or elsewhere. They will only get the service they need if we are able to attract the best possible men and women to the Federal Government, and to do that we need to increase salaries of our top-level officials."

I think it is an interesting, different perspective, with which I think many of my colleagues would undoubtedly disagree.

Chairman GLENN. Thank you, Senator Roth.

Senator Levin?

Senator LEVIN. Thank you, Mr. Chairman. And, Mr. Wertheimer, thank you for your participation in these proceedings.

On the Federal judge issue—I am not going to be able to stay as we take up witnesses who will testify more directly on the Judicial salary issue. But I would like to just pose a few questions to you since you have supported all three parts of this recommendation as it applies to all three branches.

I happen to think that an increase in Federal judges' salaries is appropriate. I think in deciding on an appropriate level, however, you have got to look at the retirement benefits for Federal judges, because that is a factor in salary levels. My understanding is that Federal judges' retirement benefits are significantly better than State judges, although I believe it was Senator Wilson who indicated to the contrary. I may be wrong on that.

I think the Federal judges' retirement works something like this: They retire at 100 percent of their salary if they are 65 and have had 15 years of service and, if they are 70 years and have had 10 years of service, they can retire at 100 percent of their salary. That, I believe—and, again, I may be wrong on this, and I think we ought to do some research on it—is a significantly better retirement benefit that State judges get.

I would ask the Chairman, if we can get our staff to do some research on the retirement benefit issue.

I am also concerned about the windfalls that will be received by some people as a result of the increase in the Federal judges' salaries. Earlier, I talked about the D.C. Superior Court. That, to me, is a windfall, pure and simple. The average trial judge in this country, local trial judge in this country, according to a press report of the National Center for State Courts, gets $69,000—$69,000. A D.C. trial judge, if this pay increase passes, is going to get $135,000. This is the same as a Federal judge, just because they are pegged together. I consider that to be a windfall.

As a matter of fact, according to this article—I am not sure, again, that this information is correct—but the appellate judge in New York is paid $115,000. Now, I think it was Dr. Cutler, although I am not sure, who said that he thought that New York trial judges make $135,000 or more. Again, my recollection may be wrong, but I just think that if these figures from the National Center for State Courts are correct, that the average salary for a local trial judge is $69,000, while by this act we are giving an appropriate increase to Federal District Court judges, we, at the same time, will, as a windfall, be giving to D.C. Superior judges, trial

court judges, $135,000, that there has got to be some review of that salary schedule. I think the Judiciary Committee is the right place to review that linkage.

I do not think your recommendation or the recommendation of this Commission directly addressed this. All I am saying is that there are some real spin-offs to this action. Take a look at——

Mr. WERTHEIMER. You may be right, Senator. I have not focused on that. I just would say, though, that I do not think that is a basis for rejecting this whole process.

Senator LEVIN. I am not saying it is, but we have to look at the impact of what is happening here and see whether or not we want the trial judges in the District of Columbia to make $135,000. That is what we have to decide, because that is what we are doing, as well as increasing the salary of the District judge.

Mr. WERTHEIMER. That is right. But if I just could comment, my only point is, having looked at that, even assuming you are right, I do not think that is a basis for bringing down the rest of this——

Senator LEVIN. I am not saying it is, but it is important that Congress look at the impact of this and look at amending any other laws to correct that impact.

Salaries of Magistrates in Federal courts, as I understand it, are linked to the Federal judges. Magistrates also will get a tremendous wage increase under this proposal. Is that what we want? Is that what is intended? I do not know.

My time ran out with Dr. Cutler so I could not truly ask him that question. But is it intended that magistrates, who I believe get 80 or 90 percent, or whatever the figure is, of the Federal District judge——

Chairman GLENN. Lloyd, do you want to come back to the table just a second and take that on? And we will extend it for the Senator.

Senator LEVIN. Was it intended by the Commission that the Federal magistrates and the Superior Court judges in the District of Columbia get these windfalls or these added salary increases?

Mr. CUTLER. None of those people are within the group for whom we recommend salary increases. It is you, the Congress, who have established the pay levels for those groups as related to the pay levels of those for whom we do set the increases.

Senator LEVIN. But are you recommending they get these pay increases?

Mr. CUTLER. We are not recommending anything.

Senator LEVIN. Okay. So you are silent on that issue.

Mr. CUTLER. That is right.

Senator LEVIN. Okay.

Mr. CUTLER. That is a problem for you.

Senator LEVIN. Finally, if I can—my time is up, and I can now address Mr. Wertheimer, and Dr. Cutler may want to listen to this as well. There are certain senior status Federal judges who are inactive. I am not talking about the active senior status judges, and I think most of our senior status judges, by the way, do have an active caseload. I am talking about the inactive senior status judges who will get a tremendous windfall as a result of this pay raise. An article in the paper yesterday said that former Chief Justice

Burger gets a $60,000 increase, and he does not have any caseload, apparently.

Mr. WERTHEIMER. Are you looking at me? Are you waiting for me to answer this question?

Senator LEVIN. No, I am really not. The only reason I am looking at you is because my time is up.

My time is up, but if Dr. Cutler would——

Chairman GLENN. Go ahead and answer.

Senator LEVIN. That is another spinoff.

Mr. CUTLER. I would simply answer about Chief Justice Burger. Chief Justice Burger is the Chairman of a Commission, a Bicentennial Commission, established by this Congress. He is working as hard or harder than I am working today, probably as hard or harder than Fred Wertheimer is working, as hard as any of you are working, for the Federal Government and receiving no compensation.

Most senior status judges do work and receive assignments. You have built into the statute, as I understand it, that senior status judges may reject assignments if they wish. There may be a case that a senior status judge who refuses all assignments should take the same status as a fully retired judge, but that is incidental to what we are doing here and not within our jurisdiction. You have full power over that.

Senator LEVIN. But you are not recommending, as I understand it, that we continue a situation where an inactive senior status judge gets this kind of an increase? You are silent on that issue?

Mr. CUTLER. A fully inactive senior status judge—I would make a special case of Chief Justice Burger. The fact he is inactive, the reason he is not sitting on courts of appeal or elsewhere, is that he is working full-time for the Federal Government without compensation.

Senator LEVIN. He possibly ought to be paid separately for that. That is a separate issue. But my question is, if we can get a short answer because I am out of time: Do you believe that a fully inactive senior status judge should be viewed by the Congress as a different situation, and that you are not necessarily recommending that we continue a situation where any pay increase for an active Federal judge go to a senior status judge who is inactive?

Mr. CUTLER. We are not recommending that, Senator Levin.

Senator LEVIN. Okay. Thank you.

Mr. CUTLER. I hope my answer has satisfied you, Senator.

Senator LEVIN. Thank you. As usual, you were eloquent.

Mr. CUTLER. I will let you get the last word.[Laughter.]

Chairman GLENN. Senator Wilson.

Senator WILSON. Thank you, Mr. Chairman.

Mr. Wertheimer, in your testimony, you have spoken on page 2 of "excessive travel reimbursements." Let me pose to you a hypothetical. Let us suppose that in any one of their many capacities—these are my colleagues—Senator Glenn or Senator Levin were invited to address the Commonwealth Club of San Francisco. I assume that you do not think that they should turn down the invitation out of hand because it would cost them money.

Mr. WERTHEIMER. What we have proposed is to restrict reimbursement to no more than 3 days, for no more than a 3-day

period. That is number 1. Number 2, to give meaning to the words "actual and necessary expenses," to make sure they do not become excuses for gifts. And, number 3, to increase and to re-establish accurate disclosure on the existing reporting forms.

Under existing reporting forms, a number of members report very clearly and very fully what they are doing. Others give very inadequate reporting information, and there really, as far as we can tell, is no distinction made or no enforcement done.

So in your situation, we would say, yes, reimbursement for a day to get there, a maximum of a day to get there, a day to give a speech, a day to get back.

Senator WILSON. And I take it, then, when you say 3 days—a day to get there and a day to get back—that what you are talking about is reasonable reimbursement or reimbursement for actual expenses. Let us suppose it is Senator Glenn who, as a member of the Armed Services Committee, wishes to combine in a recess an invitation to address the Commonwealth Club in San Francisco on the subject of nuclear proliferation. Under your treatment and my hypothetical, if he wished also to visit a couple of defense contractors in his capacity as a Chairman, or a couple of military bases in his capacity as Chairman of the Armed Services Subcommittee on Manpower and Personnel, he would be entitled to reasonable or actual reimbursement for his travel out, his travel back, and one day lodging, I take it, and board——

Mr. WERTHEIMER. Or 2 days.

Senator WILSON. While in San Francisco making the speech, and could at someone else's expense, presumably the Senate's, also visit——

Mr. WERTHEIMER. Presumably the Senate's. Well, in that kind of situation, I would assume it would be the Senate. But we have also seen examples where more than one group has combined to hold week-long events, at hardship places like Palm Springs, for example, and where people have spent a week. And part of the claim there was that, well, there is more than one group involved in that activity. So, from our perspective, the reimbursement should be no more than 3 days at any particular event or area.

As I say, we see problems with any reimbursement. We have accepted the notion of reimbursement and argue that you must draw a line between actual fare reimbursement and this becoming an excuse for 4-, 6-, 8-day trips that are fully paid for, whose purpose clearly seems to be social, not professional. And there are too many examples of those around right now, Senator.

Senator WILSON. Well, let me give you another hypothetical. Let us suppose that I am going home on recess to California, and a group that is meeting in that hardship place that you mentioned, Palm Springs, is holding their annual convention and they invite me to speak and they offer to pay transportation for me in order to come there and to return to Washington.

Is it your view that I should say, no, no, the Senate will pay for that, the taxpayers will pay for that, instead of the organization that is, in fact, extending the invitation?

Mr. WERTHEIMER. As I have said, our position has been no more than 3 days' reimbursement. Now, under that position, you could go to that group. You could speak there; you could be reimbursed

for a 3-day provision, providing they were actual and necessary expenses.

Senator WILSON. Does Common Cause's desire to see honoraria prohibited extend to the receipt of honoraria not by the individual making the speech or making the appearance, but a charitable organization designated by that individual?

Mr. WERTHEIMER. Our preference would be to see it totally end. We recognize there are differences of opinion around here about that, and we, therefore, say that if we do not see our preference, our position is that you must end any personal financial benefit from honoraria.

Now, personal financial benefit has included accepting the money for yourself; it has included, as we understand it, the ability to keep honoraria until the end of the year, give it to charity, and keep the interest income off of it; it has included the ability to use charitable honoraria for Keogh purposes.

So, in our view, any personal financial benefit should be eliminated. If the Congress is to keep some ability to tell a group who to contribute honoraria to for charitable purposes, it should be done in a way in which the member takes no control over the money but simply informs the group where to send it.

Senator WILSON. I assume, then, feeling as you do about honoraria, you feel the same way about political action committees? Or is that not the case?

Mr. WERTHEIMER. Well, we have strong feelings about the role of political action committees.

Senator WILSON. Do you think they should be eliminated?

Mr. WERTHEIMER. I do not know if they should be eliminated or if their role should be dramatically reduced. Part of the problem is we want to see a comprehensive package, a package that deals with spending limits, a dramatic reduction in the role of PACs, alternative ways for people to finance their campaigns—because as you know better than most, coming from California, campaigns can be very expensive—a solution to the problems of soft money in presidential elections. So we look to a comprehensive package for solving this problem.

Senator WILSON. Well, I do, too. And I would personally eliminate soft money. I personally would eliminate PAC contributions. I find it strange, frankly, that Common Cause has not supported legislation to do that. Where we differ is that you think there should be public financing and spending limits. And I will tell you, coming from California, campaigns are hellishly expensive, and it is a great burden on a candidate to raise the money. On the other hand, I must tell you, too, that, given the Federal rules—talk about broadening the base. The base is very broad. It has to be. And I would have to tell you that, although it is a burden, again, I do not regard my convenience as a candidate as an urgent public priority. I think it is incumbent upon me to discharge the responsibility to raise my own campaign funds and to do so in a way that does not compromise me. And I must say, the Federal law that requires that no more than $1,000 be taken per individual and that prohibits campaign contributions from corporations and labor unions has assisted greatly, not only in broadening the base but eliminating, to anyone reasonable, any inference that someone has been bought by

a contribution that amounts to a tiny, tiny fraction of 1 percent of your entire campaign budget.

Mr. WERTHEIMER. We are hopeful, Senator, that there are serious discussions in the Congress in both Houses this year. We are hopeful that there can be bipartisan negotiations on a comprehensive legislation. Our sense is that there is almost unanimous feeling now that there are problems with the present system, and the challenge is to how to get on to a new system. As I say, we are hopeful that there are serious negotiations that take place. We would hope to play some role in that.

Thank you, Senator.

Senator WILSON. Thank you, Mr. Wertheimer.

Thank you, Mr. Chairman. I had a great interest in the subject that is not new. John Gardner, the then-State Chairman of Common Cause, and Mike Walsh were involved in an effort that I made many years ago in advance of the change in Federal law to bring what I saw as campaign reform to local ordinances when I was mayor of San Diego. And we enacted something that was pretty close to what became Federal law. It was actually more stringent and was then described by Newsweek as the toughest campaign election law in the Nation.

I cannot agree with you on public financing or on spending limits, but we can develop that at greater length.

Mr. WERTHEIMER. I understand, Senator, and I remember your role well in those days.

Senator WILSON. Thank you, Mr. Chairman.

Chairman GLENN. Thank you very much.

Thank you, Mr. Wertheimer. We appreciate your being here.

Mr. WERTHEIMER. Thank you.

Chairman GLENN. We now have the two judges, if you will take your seats at the table. You have been very patient, gentlemen.

The Honorable Frank M. Coffin, Chairman of the Judicial Conference, Committee on the Judicial Branch; and the Honorable A. Leon Higginbotham, Jr., Circuit Judge, Third Circuit Court of Appeals, State of Pennsylvania.

Welcome, gentlemen, and we are sorry you have had to wait so long this morning, but the questioning took longer than we anticipated today.

Judge Coffin, if you will lead off, we would appreciate it.

TESTIMONY OF FRANK M. COFFIN, CHAIRMAN, JUDICIAL CONFERENCE, COMMITTEE ON THE JUDICIAL BRANCH

Judge COFFIN.[1] Mr. Chairman, we do not mind having waited. We appreciated listening. We feel that Mr. Cutler covered many of the things that we would cover, and I think I speak for Judge Higginbotham and all the judges I know in saying that we can think of no more outstanding chairman than he has been of this Commission through the past several months.

Senator WILSON. Mr. Chairman, could I interrupt Judge Coffin just for a moment?

Chairman GLENN. Yes.

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[1] See p. 127 for Judge Coffin's prepared statement.

Senator WILSON. Evidently, I misspoke earlier. I made a comment, and for the record, I would like to correct it. I made a comment that retirement benefits are superior for State judges in California than for members of the Federal Judiciary. Actually, what I should have said is not retirement, but survivor benefits are better; also, the salary is higher.

Judge COFFIN. Yes. I would say also that the survivor benefits for Federal judges are different. While the Congress has made progress, a spouse needs to survive his or her partner to the age of 55 before qualifying. It is not as liberal as some of the State systems.

Senator WILSON. No, and that has in fact been a real inhibitor to recruiting for the Federal bench in California.

Excuse me. Thank you.

Judge COFFIN. I appreciate that, Senator Wilson.

The first thing I want to do, Mr. Chairman, is to present to you for filing a letter from the Chief Justice to you and the Committee, in which he endorses the judicial case in the brochure, "Simple Fairness," which we are making available to your Committee, and you probably have seen it.

He points out the number of resignations, the number of threatened or considered resignations, the erosion that has been talked about today, and says, if I may quote, "Quite simply, the proper functioning of the Judiciary as an institution depends on the people who serve it, and a continuation of the historical tradition of excellence in the Federal courts depends on the Nation's ability to attract and retain in office individuals of the highest ability and integrity."

I share these views, and I am pleased to have the opportunity to commend them to you and the members of your Committee.

You have a letter from him, and I understand that he has also sent Senator Roth a similar letter.

I want to touch in the few minutes that I want to take—because I think it is important for Judge Higginbotham to have as much time as is possible—I want to touch on things that have not been talked about before in this Committee.

Number one, the dilemma that all of you have expressed about voting on your own salary and what you get, as Senator Cohen said when he talks to people in the bake shop, is nothing new. Alexander De Tocqueville commented 150 years ago that, "In America, the secondary officers are much better paid, and the higher functionaries much worse, than elsewhere. These opposite effects result from the same cause: the people fix the salaries of the public officers in both cases, and the scale of remuneration is determined by a comparison with their own wants." So, Mr. Chairman, what else is new?

That was a Frenchman. Let me now quote an Englishman, a great friend of this country in the 1770's, Edmund Burke. He said, "Your representative owes you," he said to his electors of Bristol, "not only his industry, but his judgment, and he betrays, instead of serving you, if he sacrifices it to your opinion."

That, of course, is the $64,000 question for any representative and any Senator—when should I exercise my judgment, and when should I bow to opinion?

As to opinion, of course, your mail is running tremendously heavily against this raise, but a fair question is whether the instinctive judgment of somebody who is struggling to make ends meet and who obviously cannot see the wisdom of this weighs as much as the judgment of a publisher and his editorial board, used to dealing with many problems of governance, and who comes out recommending this.

In the statement I have filed with you, Mr. Chairman, I have listed about 50 newspapers throughout the country, from Chattanooga to Portland, Oregon, and Portland, Maine, and Temple, Texas,[1] and I have another submission of some 80 editorials with some 34 other newspapers listed, which will be made available to the Committee.

Chairman GLENN. Without objection.

Judge COFFIN. Thank you, sir.

In other words, many media in the first tier, the second tier and even the third tier throughout the country, north and south, liberal and conservative, have said this is a wise thing in the interest of the country.

Now, the theme this morning has been that the deficit is the preeminent challenge to all of you. What I would like to remind you is that on the same weekend last November, your Congressional watchdog, the General Accounting Office, came out with two reports for the transition process for President-elect Bush and the Senate and the House. The first one talked about the need for very serious grappling with the deficit, by many means, and it was not going to be easy.

But the same weekend, another transition report, in which the problem equally important in the minds of your watchdog was the people problem. The Government's ability to acquire and retain good people, it said, was diminishing drastically. It even said, "The Federal Government's pay structure has broken down."

In other words, the GAO, obviously recognizing the deficit, equally recognized the necessity of putting our own internal affairs in order as far as stopping the infection that attended the appearance or reality of being subject to special interests, which Mr. Wertheimer has been talking about; stopping the anemia and malnutrition that prevents us from getting the best people; and stopping the bleeding that occurs when good people leave.

And I should say that we have that problem, too. We are getting into a situation in the Judiciary, Mr. Chairman, where almost as important as the resignations that have taken place in the past and the difficulty of recruitment is the planning that younger judges per force are having to make, contingent planning, saying, "Well, after 5 years, with 3 or 4 children to send through college, I just cannot stay any longer—even though I wanted to make the Federal Judiciary my life work, I am going to have to leave." When they leave, as some have already done, they leave for salaries two, three, or more times what they earned as a Federal judge. And the irony is that in the minds of many, they are a "judge" for the rest

[1] See footnote on p. 128.

of their lives. In other words, being a judge is a way station in an upwardly mobile career, and that I see as one of the grave dangers facing the Judiciary.

The rest of my statement that I have filed with you is really a fact sheet in which I tried to distill the important facts from our submission to the Quadrennial Commission and from the Quadrennial Commission's report. I have told you in that statement briefly about how there has been erosion, but Mr. Cutler has done that better than I could do it. I have told you how judges we have surveyed have experienced to the extent of 43 percent a decline in their standards of living; two-thirds of them have lowered their savings and have increased their debt; one-third report that the judge or his or her spouse is working part-time; over half have had to sell assets.

More important for the Congress to consider, though, is not how they feel, the judges, but what is the effect on the Judiciary. Resignations have taken place, as you know, at a vastly accelerated rate. We ourselves conducted exit interviews with 26 judges who have resigned totally during the past 10 years and finances was a factor in 20 of these cases. This has also affected bankruptcy judges and magistrates.

Mr. Cutler referred to the survey that indicated the 30 percent of judges are contemplating an early resignation, and of these, 30 percent of that 30 percent planned to leave within 5 years. And of critical importance—and this is a survey not by us in the Federal Judiciary, this particular one, but by the American Bar Foundation—the group most likely to leave are the judges between the ages of 53 and 57, with 5 to 8 years of service—judges, in other words, with a background of experience in their prime where they should be rendering their years of major service to the Judiciary.

Recruitment is difficult, and I want to underscore where it is particularly difficult, and it corroborates with something Senator Wilson said, and it was testified to by representatives of the Hispanic Bar before Mr. Cutler's Commission, by the National Bar Association of Black Lawyers, and by a representative of the Women's Bar Association. All of them pointed out that, unfortunately, it is true that today in the top ranks of practice, we still do not have too many representatives of those minority groups and of women. If you find a minority representative or a woman so successful that he or she is a top candidate for the Judiciary, you cannot persuade that person to become a Federal judge without a great deal of difficulty. Here, they are making a top salary; they, for the first time in their lives, are facing the chance to give their children a good education. And the difficulty of attracting those people was summed up by one of our distinguished Hispanic judges, a Federal district judge, Joseph Rodriguez, who said: "The Judiciary is almost off-limits to worthy candidates in minority communities."

I do not need to tell you what the competition is; the pool from which our judges must come is the practice of law. And you know from the data we have given you what lawyers are paid—and we are not talking about the top of the profession in the biggest law firms; we are talking about median income lawyers, which repre-

sent good, bad and probably a lot of mediocre ones, and their median income is almost $160,000.

Well, can we get judges? I will close with this thought, that of course we can get judges. We can even get competent people at salaries that are being paid today. They will be very rich competent people. They will be very poor public interest lawyers, but very competent. They might be a State judge, along in years, with his own pension, very competent; he will join the Federal Judiciary.

What you will not get is the younger, middle-class judge with a family; women; and minorities. And to settle for a bench of the rich, the poor, the elderly, the ascetic, the ideologue and the upwardly-mobile transient, in a very basic sense will be to scuttle what we all see as the independence, excellence, balance and stability of the third Branch.

That concludes what I have to say here, Mr. Chairman.

Chairman GLENN. Thank you very much, Judge Coffin.

Judge Higginbotham?

TESTIMONY OF A. LEON HIGGINBOTHAM, JR., CIRCUIT JUDGE, THIRD CIRCUIT COURT OF APPEALS, STATE OF PENNSYLVANIA[1]

Judge HIGGINBOTHAM. Senator Glenn, Senator Roth, I thank you for the honor to appear here today.

I guess you may be wondering why am I here. I am not the chairman of the official committee. I guess it is because of age. I am the oldest Federal judge who is not eligible for retirement because I have been a Federal judge now for more than 25 years.

And what I would like to do with your permission is to try to put this whole issue into perspective as to how the courts have changed since the year I had the great fortune to go on in 1964.

What is the problem on the debate, at least as I see it? A professor at Yale Law School once said to our class, "If you ask the wrong question, you will get a simplistic and probably wrong answer."

As I listened to your brilliant colleagues of the Senate, I submit nevertheless, in all due respect, that most often, the wrong question was being asked, and accordingly, the answer was far too simplistic. And I respectfully submit, at least as to the Federal Judiciary, if they would vote against the raise, it would be wrong.

What is the wrong question? The wrong question is: Do the taxpayers want the salaries of Federal judges to be increased? If you frame it in that simplistic way, what is the instinctive answer? It is "No".

Senator Glenn, when President Kennedy wanted to do something about the Space Program in this country, he did not go to the American public and say, are you willing to spend $5 million, or $8 million, or $10 million. He said do you want to be first.

And in a real sense, the issue today involving the Federal Judiciary is simply this. Should the American citizens have a significant diminution in the quality of justice on our Federal courts in order to save the very, very modest cost of the proposed salary increase? That is the issue. And if the American people want the Federal

[1] See p. 146 for Judge Higginbotham's prepared statement.

courts, which have been the bastion of safety, a court generally of great impartiality, which looked Presidents in the eye as it did with President Nixon, recalcitrant Governors as it did with the Governor of Alabama, and business executives who did not want to comply with the antitrust laws and give them equal justice—if that is what we want, the pay raise has to take place—and I submit to you, Senators, not for the benefit of the judges. At threescore years, I have 4 years before I can retire, so this is not a plea for Leon Higginbotham, and it is not even a plea for the present incumbents of Article 3 positions.

This is a plea which I submit to you must be understood—must be understood—in terms of what is good for the country and is the modest increase which has been proposed worth the price to keep the quality of justice for our Nation as to where it should be.

Let me eliminate one of the first factual misperceptions. A 50 percent increase is a big raise. Big raise, I understand that. My father was a laborer. My mother was a domestic. I know that a 50 percent increase is big dollars. But it is not in terms of Federal judges.

If you were running a hospital, you would not decide the salary you are going to pay neurosurgeons, who will be conducting the most delicate operation for a subdural hematoma, on the grounds that the secretaries were good people and that the laborers do not make nearly that much.

And if the U.S. Senate wants to take that type of simplistic position, our country is in greater danger than what I had contemplated.

Now let me talk about that raise, not for Leon Higginbotham. I have been offered presidencies of universities, Ivy League universities. I have been offered commissionership of a major sports complex, and lots of other opportunities in the private sector. If you took the figure from 1969 to 1989, the base which Lloyd Cutler has used—and Lloyd Cutler is one of the heroes of this country because he is willing to spend all the time he has to try to make sure that we do what is right; to, in President Kennedy's words, make this country what it someday should be.

If our salaries had remained the same, with the adjustments for inflation, between 1969 and 1989, as a circuit judge I would have received $190,825 more than what I have received. If you are a district judge, you would have received $183,000 more.

Now, in a real sense, that is the out-of-pocket loss. So that the arguments which this Commission has made for what you call a 50 percent increase—it is not to make up for lost funds; it is merely to deal with having parity from this point forward. That is very, very basic.

Now, what is the difference between the court now and the court which I knew when I was nominated in 1963 as what now I call a "young lad" but then I called a "serious person" of 35 years old?

When I went on the Eastern District of the United States of Pennsylvania, the judge who followed me the next day was 22 years my senior, John Morgan Davis; the judge who preceded me was 24 years my senior—both in their late fifties.

How long did they serve the court? A maximum of about 10 years of active service and a very short period of time of senior judge status.

The truth of the matter is that this Senate will have no more ability to change the life expectancy tables of Americans than anyone. And if you are going to have judges who are being appointed in their late fifties, early sixties—at least over 55—and the last three judges on the United States Court of Appeals for the Third Circuit, fine persons, honorable persons, over 55, all former State judges, all coming in with a State pension—it is as certain as the fact that night follows day that their life expectancy on the court is not going to be the life expectancy of those individuals who went on the court, as I did in the thirties, or others went in their early forties.

This is a loss to the American people. Judges are not born. We can go to the finest law schools in America. We can have substantial practices. But when one becomes a United States district judge, you deal with a spectrum of problems which no one has covered that magnitude. We cover from the dechlorination of chlorotetracyclines and complicated product liability cases, to airplane crashes, to antitrust, to labor problems, to criminal problems.

So in their best—Chief Justice Burger is correct, who says that even the most competent judge needs 5 years at a minimum to come up-to-speed. That is not surprising. I believe that even the great United States Senators require more than 60 days to come up to full speed of competence and expertise and appreciation of all the subtleties they have to deal with.

So, what is it that has happened between the court of 1964 that I knew, that I went on as the young kid on the block, where most of my colleagues had children who were my age, and the court of the late 1980's? More than one-third of the judges appointed in the last 2 years have been under the age of 45. It means that when you get that large a number, the probability is that you are going to be able to get 20 to 25 years of individuals who are at their prime and are going full-speed.

But what is the sequelae to having judges go on who are 40 to 45? Most are married—and I presume that is not a bad virtue. Most have children—and I presume that that is commendable. And if you have children, you want them to get an education. And the critical, cutting edge issue as to why Federal judges might very, very well resign is the education costs, because after they get on the court their children are starting to reach the peak of education costs.

I have got data in my statement to point out that 10 of the 12 judges on the United States Court of Appeals, when they went on the court under the new system, had children either in elementary school or in high school.

Now, I note that tomorrow, you have placed Mr. Ralph Nader as one of the vigorous critics on your agenda to oppose the salary increase. And I would like for you to ask Mr. Nader these questions.

Must everyone who becomes a Federal judge be monastic? I respect him for what he does for consumers, but he is not married. And I would ask you to ask Mr. Nader, without equivocation: Mr. Nader, do you want Federal judges to have the same type of oppor-

tunity that you did? Mr. Nader went not to Timbuktu, but to Harvard Law School—and we all know there is only one better law school than Harvard. His sister went on to get her Ph.D. in anthropology from some of the best universities in America.

What is the problem of a Federal judge who is in this twilight zone, which I beg of you to understand, when the Federal judge says, "I want my child to get the same kind of education that Ralph Nader and Laura Nader got"?

And what is it that happens? Let me give you one example. I got his permission to make reference, and it is on footnote 18 on page 18, where I spell out the whole mix in terms of the problems that Federal judges have who have children.

The chief judge of the United States District Court for the Eastern District of Pennsylvania is John Fuller—a great, able judge. Like Mr. Nader, he went to Harvard. Unlike Mr. Nader, he got married, and he and his wonderful wife Alice had four children. And they wanted for their children the type of opportunities that they had had. One child went to Reed; another to Swarthmore; a third to the University of Pennsylvania, and the fourth to Cornell. And what happened? For 8 years—8 long, dreadful years—his education costs exceeded his net judicial income—his net judicial income.

And if you look at the footnote I have on page 18—and others have been a little more reluctant to publicly reveal how hard it has been for them—that is the problem.

When we were before Lloyd Cutler, Lloyd put in the record a very fine letter of a competent judge from Georgia. This judge said to Mr. Cutler, "I love the job and would sell off assets if necessary to meet my living expenses, the biggest of which is the education of my children. If I did not have some farm and timberland that my father left me, I doubt if I would be so sure that I will spend the rest of my career on the bench."

The truth of the matter, if you want pluralism in America, is there are going to be lots of people who came up my route whose parents did not leave them timberland. But if anything, you have to try to carry them.

So what is going to happen with the Federal Judiciary—and I think it is predictable and certain—we are going to destroy the pluralism in this country—the pluralism that we have just started to get.

When I went to law school, there was not one black on the Federal Judiciary in America, and I think only one woman. As we have become civilized, we have started to recognize that the greatness in America is our pluralism and our strength.

Now, what is it that is going to happen? What is it that is going to happen? We are going to fall into what has been pointed out so very, very ably by Judge Coffin. I think we are going to end up with 5 categories, and I spell them out in a little more detail at page 22.

This is what will occur. Persons of enormous wealth, for whom the amount of the current judicial salary is almost irrelevant—and there are lots of individuals like that. And I am not against the wealthy being on the court, but I wonder whether that is adequate as a mix.

The other is what I see in the Third Circuit happening, what I call the "double-dippers"—individuals who have been on the State court, they have got a State pension, and then at the age of the fifties, they come on.

Or we are going to get persons in their very late fifties and early sixties, and they are going to come on—good judges. Their children are educated, but their life span is limited. When one gets on the Federal court, you cannot issue a decree to give yourself an additional 10 years in your life span.

And then, what I believe is the greatest risk—and we have only seen the tip of the iceberg, but it will explode amazingly if you do not get these salary increases—you are going to get those individuals who look upon the Federal judgeship as a way station. They serve 4 or 5 years and then leave and double or triple or quadruple their salaries.

The fifth and last category would be you could get individuals who are either ideologues or persons of very marginal competence, neither of which would be good.

If this happens, I am not saying that America will be destroyed. We have proven that we can hurt ourselves and damage ourselves very much and still survive. But if you have a dream of an America where individuals of talent can serve their country, individuals who were not born with a silver spoon in their mouths, and individuals can serve while they are young and in their prime, if you deny this increase, you will destroy that dream.

When I say that it will become a bastion of the very wealthy, that is not some liberal Federal judge articulating it. What you have in the letter from President Reagan to you on January 6th is the same fear. He says, "We must not allow Federal service to become the province only of the wealthy."

I want to thank you, Senators, for taking on a tough issue. Occasionally, I think that a philosophical perspective may be more helpful than a statistical distribution. So let me close with a statement which is in Profiles in Courage by a person who was a member of this august body and who looked at the great individuals who have preceded you and tried to ask what it was that made a Vandenberg or a Norris, people from both sides of the aisle, from all sides of the country, so great.

He says that their greatness was because they recognized, quote, "The voters selected us, in short, because they had confidence in our judgment and our ability to exercise that judgment from a position where we could determine what were their own best interests, as part of the Nation's interests. This may mean that we must on occasion lead, inform, correct and sometimes even ignore constituent opinion, if we are to exercise fully that judgment for which we were elected."

On the issue of Federal judges, I submit in all due respect, the test of Profiles in Courage, which Senator Kennedy wrote, is before this Senate again. I would like to have faith that you will rise to the moment.

Thank you, Senators.

Chairman GLENN. Thank you, Judge. Thank you both for your very eloquent statements.

I have just one question which you might wish to expand upon a little bit; you both have already addressed it to some extent. You mentioned that Mr. Nader will be here tomorrow, and I think he has been quoted as saying that, "You could have a line around this Capitol 16 times composed of qualified lawyers who would love to be appointed to the Federal bench." Mr. Nader apparently believes that there are many consumer, labor and less profit-oriented lawyers willing to do the job; and that we should consider the income of the average American family as a yardstick of sorts in setting Government salaries.

Would you like to respond to that?

Judge COFFIN. Yes. I think the first part is quite true. Judge Higginbotham and I are not saying that there are not many people out there who would be competent—if the American people are willing to settle on a Judiciary that represents a very small part of the spectrum of the country. And I do not care whether it is a Republican President or a Democratic President; that President is not wise if he or she chooses people from just the wealthy or the able public interest type of lawyer or the superannuated person with a pension.

The other part of this statement, that what the average person earns is the yardstick, brings me back to de Tocqueville. That is what we always thought, and I could have quoted more how, in those days, they thought that a Governor with, as de Tocqueville said, his $1,200 or $2,000, was considered to live in some opulence. Unfortunately, Government today, in all three branches, is the most demanding human chore that faces a country, whether we are talking about running an important part of the Pentagon, procuring components for a weapon systems, or are talking about an environmental protection expert determining standards for toxic waste, or are talking about a Senator with so many committees and subcommittees and with the weight, literally, of not only the Nation but the world on his shoulders, or are talking about these judges, who have the task of administering justice under law in the most complicated legal system—but also the most satisfying if it is well-done—that the world has known.

So I would challenge him on his latter statement, agree with him on his first statement, but say that is not the vision of the Federal Judiciary that either Judge Higginbotham or I or any other Federal judge has.

Chairman GLENN. Thank you.

Judge Higginbotham, do you wish to respond any further?

Judge HIGGINBOTHAM. Yes. I think I would respond to Mr. Nader with even more vigor. I would first of all ask Mr. Nader, this list of all these people you have circling around the Capitol, why didn't you give it to President Reagan? In the last 8 years, fewer blacks were appointed to the Federal court than during the Carter years. Now, do you mean to tell me he has had this list of all these people circling around, and he has not used it?

Well, if he has not used it, maybe it is because Mr. Nader is not President, and he is not going to make the nominations. And if he has not used it, it is because he is not Attorney General, and he is not making recommendations. And if he has not used it, he is not a

United States Senator who is involved in the confirmation process and in the recommendation.

So all that is, is what I call the problem which Justice Brandeis described. He said, "One must move from the illogic of words to the logic of realities."

Now, I am not overwhelmed with his list. He has not been able to do it in the past. So who is it—who is it—who should not press this distinguished United States Senate? He has all these minorities he is going to march up—it almost sounds like, if you have read the literature, when people had slave blocks, and they had them on the auction and then sold them; so Mr. Nader is going to deliver them all to you as United States Senators, and President Bush is going to appoint them.

What is Mr. Nader's constituency? I would rely, in all due respect, on the NAACP Legal Defense Fund. The NAACP Legal Defense Fund, I assure you, has done more for black people in any one week than Mr. Nader has done in a lifetime. They were the ones who argued *Brown* v. *Board of Education;* they were the ones who, in the early 1900's, argued *Buchanan* v. *Worley,* involving housing; they were the ones who, in the early 1900's, challenged the Oklahoma "grandfather" statute on voting. And the NAACP—Senator Roth has pointed out that Ben Hooks supports it. The NAACP Legal Defense Fund, Julius Chambers, supports it.

So, despite all these people, Mr. Nader is going to march around the Capitol the NAACP, the NAACP Legal Defense Fund, people who are in the trenches every day, not making the 7 o'clock news, but doing something at 10 o'clock in the morning in court—they support it.

Thomas Duckenfield testified before the Cutler Commission. He is President of the National Bar Association, which has most of the black lawyers in the country. They support it.

Gilbert Paul Caraso, who is President of the Hispanic National Bar Association, testified before Mr. Cutler's Commission, and he supported it.

Ms. Jamie Harris, who is President of the National Conference of Women's Bar Association, testified before the Cutler Commission, and she supported it.

Therefore, I would urge that you not be misled by his ability to either make the 7 o'clock news, or to march people, as he says, around the Capitol, when the individuals who have constituents who elect them and to whom they are responsible are all in favor of the pay raise.

Chairman GLENN. Thank you.

Senator Roth?

Senator ROTH. Thank you, Mr. Chairman.

I have a comment; I do not have any questions, as I have a conflict of interest in this area. But I do want to congratulate both of you for your testimony.

I might recommend to the President that if there is anyone he ought to have to take care of the public relations of an issue, Judge Higginbotham, I would strongly recommend you. I think it is very understandable why you have a reputation for eloquence and persuasiveness.

I particularly appreciate the fact in a way that you brought it back to the real question—I put it a little bit differently—but it

seems to me the real question is what should be the criteria to determine fair compensation for senior Government officials, whether they are judges or Senators or the Executive Branch. In other words, what is necessary to attract and retain qualified employees from all walks of life.

Unfortunately, it seems to me the public debate has centered around how much the increase is, and that is the wrong way to persuade.

But I thank you, gentlemen, for being here today.

Chairman GLENN. Gentlemen, you have been very patient with us. We hope that, if there are other questions that other Committee members have, that you will be willing to respond to them so it will be part of the Committee record.

You have both been very eloquent this morning. All of the statements this morning have been very good and right to the point.

Tomorrow, we will have, as has already been mentioned, Mr. Nader, but as our first witnesses tomorrow we will have the honorable Gordon Humphrey of New Hampshire; Larry Pressler of South Dakota; Charles Grassley of Iowa. Then, Mr. Nader, who will be accompanied by Joan Claybrook, President of Public Citizen and David Keating, Executive Vice President, National Taxpayers' Union. So we will have a busy morning tomorrow, and we will try to start right on time so that we have the maximum amount of time for those who oppose the pay raise to make their points. And, I am sure they will wish to respond to some of the things that were said here today.

Thank you, gentlemen, very much.

The Committee will stand in recess until 9:30 tomorrow morning.

[Whereupon, at 12:55 p.m., the Committee was adjourned.]

REPORT OF 1989 COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

WEDNESDAY, FEBRUARY 1, 1989

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 9:37 a.m., in room 342, Dirksen Senate Office Building, Hon. John Glenn, Chairman of the Committee, presiding.

Present: Senators Glenn, Lieberman, Stevens, and Roth.

OPENING STATEMENT OF CHAIRMAN GLENN

Chairman GLENN. The hearing will be in order.

This is a follow-on hearing this morning to the first one we had yesterday, at which time we had those who favored the pay raise. We had Mr. Wertheimer and Lloyd Cutler, as well as two Federal judges, Coffin and Higginbotham testified yesterday, and today is the day we set aside for those who are opposed to the pay raise, basically.

On January 9th, 1989, President Reagan transmitted pay recommendations to the Congress in accordance with the terms of the 1967 Federal Salary Act which created the Commission on Executive, Legislative and Judicial Salaries, also known as the Quadrennial Commission.

The President's proposals would raise the salaries of senior-level Federal executives, Federal judges, and Members of Congress.

President Bush has endorsed President Reagan's pay plan. I read his statement into the record yesterday morning, which the Administration indicated would be their definitive statement on President Bush's view of the pay plan.

The plan will take effect within 30 days of its submission unless Congress enacts a Joint Resolution to disapprove the salary proposals.

The Joint Resolution would then require the President's signature or passage over a veto.

In my capacity as Chairman of the Governmental Affairs Committee, the Committee with jurisdiction over the civil service personnel system, I have been asked by Senate leadership to chair these hearings on President Reagan's pay proposals in order to provide the Senate with a forum on the pay raise issue.

As I indicated this is the Committee's second day of testimony. We heard from leading proponents of the pay proposals yesterday,

today we will hear the opponents, and I wish to welcome everyone to today's hearing.

Those scheduled today to testify are Senator Gordon Humphrey of New Hampshire, Senator Larry Pressler of South Dakota, Senator Charles Grassley of Iowa Senator Jesse Helms of North Carolina, and perhaps Senator Terry Sanford of North Carolina also. I am not sure whether he is still planning to testify this morning, or not.

Following the Senators' testimony we will have Ralph Nader, consumer advocate, accompanied by Joan Claybrook, President of Public Citizen, and then Mr. James Dale Davidson, Chairman of the National Taxpayers Union.

Before we start with our Senatorial colleagues here, with their statements, do I have any statement from you, Senator Stevens?

Senator STEVENS. Thank you, Mr. Chairman. Happy to with you again. I do not have an opening statement this morning; no.

Chairman GLENN. Thank you. Senator Lieberman.

Senator LIEBERMAN. No, sir. Thank you.

Chairman GLENN. Fine. Thank you.

Senator Humphrey was first on my list. I understood you wished to allow Senator Pressler to go first, is that correct?

Senator HUMPHREY. Yes.

Chairman GLENN. Senator Pressler, you are recognized for such statement as you may wish to make.

TESTIMONY OF HON. LARRY PRESSLER, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA [1]

Senator PRESSLER. Very kind. And I must also note the presence of Senator Grassley who co-wrote this piece of legislation we have proposed, and he will no doubt have extensive remarks on it. I shall summarize my statement, to say that I want to thank the Committee members for giving me this opportunity to testify.

I am opposed to the President's pay recommendation for members of Congress, senior Federal officers and Federal judges, and believe the Senate and the House should vote on this matter.

That is a key issue in my thinking. Since I came to the House in 1975, I have been very active in insisting that there be a vote on these matters, because the Constitution says that Congress shall set its rate of pay, and I do not believe it is proper, the way that we have reverted to a commission form of decisionmaking.

This is not a new issue and there is no need for extended discussion of this matter here. Therefore, I will keep my remarks brief.

The proposed pay raises should be defeated. We must start reducing the projected deficit for this year, and there is no better place to begin.

Regardless of the pay raise proponents' arguments that the increases are budget neutral public opinion would be more supportive of our budget-cutting efforts if we started the process by rejecting these pay raises.

How can we expect others to make sacrifices if we allow these pay raises to go forward at this time? Most important, these pay raises should be subject to a vote in both Houses.

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[1] See p. 186 for Senator Pressler's prepared statement.

As the Committee members know, my friend, Senator Grassley and I, along with a bipartisan group of 27 other Senators, have introduced a proposal to not only disapprove these pay raises, but also to rescind the pay raises upon enactment of our resolution, regardless of whether it passes after the 30-day deadline.

Additionally, it would require a recorded vote on all future Congressional pay raises.

The leaders in the House have announced that they do not plan to permit a vote on this issue before the 30-day deadline.

Therefore, the second provision is the key component of our Senate piece of legislation. It would rescind the pay raises even after the February deadline. Thus, it would keep this issue alive well after February 7.

It would give the American people time to put sufficient pressure on the House leadership to produce a meaningful vote on this issue in the House.

Automatic Congressional pay increases are bad public policy. The American people deserve a forthright, candid, up-or-down vote on the Congressional pay.

This resolution ensures that the Congress will have a chance to vote to rescind the pay raises, and would permanently do away with automatic Congressional salary increases.

I believe that our 3-part proposal is the best legislative vehicle to put pressure on the House to vote. Because the House does not plan to vote on this issue before February the 8th, a vote in the Senate on a resolution to simply disapprove the pay raises would be meaningless.

Our proposal includes a provision to rescind the pay raises. Thus, a vote after February 7th will count. So this time, even a vote after the deadline will have teeth, in contrast to the meaningless vote by the House of Representatives the last time Congress sneaked through a pay raise.

Many already believe, with justifiable skepticism, that the pay raises will go forward. From past years, they have seen that a simple resolution to disapprove the increases before the 30-day deadline has little chance for success.

If the Senate is sincere in its efforts to defeat the pay raises, it should vote on our resolution.

Mr. Chairman, our resolution was crafted after consulting with a variety of Congressional offices, Democratic and Republican.

It is a piece of legislation that addresses all the issues, in the sense that it is a resolution of disapproval, but also, it goes two steps further. It provides for a potential rescission, which means the House could either use a discharge petition or could go through the Committee route.

It would put more pressure on the House to have a vote, and finally, it says that future pay raises will not be enacted without a vote.

So, in conclusion, I think the key elements of this piece of legislation, which now has 30 Senate cosponsors, is that it says that Congress should not be using this procedure.

And I do not condemn this Committee, or anyone in particular. I know this has been the procedure since at least 1974, and perhaps before. But the fact of the matter is that this erodes confidence in

Congress. It makes us look as though we are not doing our job by having something go forward, automatically, without a vote.

Chairman GLENN. Thank you.

Senator Humphrey, and then we will go to questions. Or Senator Grassley is here also. Maybe you can just sit at the witness table down there. Senator Humphrey.

Senator HUMPHREY. Mr. Chairman, a word of explanation, of which you are already aware, but for the benefit of others. In the midst of printing out my speech this morning our office printer broke down, and I am not prepared to go just yet. So I would be happy to yield my place.

Chairman GLENN. Fine. All right. Senator Grassley.

TESTIMONY OF HON. CHARLES GRASSLEY, U.S. SENATOR FROM THE STATE OF IOWA [1]

Senator GRASSLEY.Mr. Chairman, first of all, thank you for having this hearing. Particularly, thank you for letting us, as your colleagues, address this issue.

I hope you don't think we have our heads in the clouds. I recognize that this is not a very popular issue for one, two, three, or four of us to talk about to the other 96. We are probably about as welcome as a skunk at a Sunday afternoon picnic, discussing this with our colleagues.

I also want you to know that I realize that there is not anything new I can tell you about this. So why do I come to testify?

Well, I come to testify because though it seems to us that this issue comes up frequently during our tenure in the Senate, in the public's mind, it is always a new issue. In the public's mind, if you do not speak out on this, it is interpreted that you support the pay raise. It is interpreted that you are playing a game that you will "vote no and take the dough."

Even though I do not have new information to offer this Committee, I believe your leadership creates the environment to bring out these issues. Perhaps you would rather not, but we appreciate your taking the time to do that, and to hear the same old arguments that you have heard so many times.

So, I thank you.

I believe that we should reject the pay raise. I believe that the Senate should take the lead. I think, just as does Senator Pressler, that if we do not take the lead, then there would be less pressure on the House to reject the raise. That is a stumbling block.

This is probably some violation of comity, but the 85 percent of the public at large that is opposed to this does not care about congressional comity.

The public wants us to get this job done any way that we can get it done.

The Senate should take the lead with legislation that lends real substance to anti-pay raise talk. That legislation is obviously that which Senator Pressler and I developed. It will not only roll back the pay raise—except for the judges, which you cannot constitu-

[1] See p. 187 for Senator Grassley's prepared statement.

tionally roll back, if we do not get the process stopped by February the 7th.

We must make sure that in the future we always have a vote on pay raises. The law required a vote on pay raises from 1977 till 1984 or 1985. At that time, in a reconciliation bill, the law was changed back to the original way it was in 1967.

Under the previous law we thought that the Quadrennial Commission recommendations without an actual up or down vote.

Another thing, perhaps more related to the House of Representatives, would be to extend this time to reject the pay beyond 30 days. You know, the House may be able to stay out of session until February the 9th, but the House can not stay out of session until March the 9th, or some other date after that.

I think we should ask ourselves a question. That is, how have we gotten into a parliamentary situation in which 85 percent of the people, according to in the polls, oppose this, as does a majority of the Senate. A hefty majority of the members of the Senate oppose the pay raise.

I think even a majority of this Committee has suggested, somewhat publicly, that they oppose the pay raise. This is the same for the House of Representatives. Yet, we are in a position for the pay raise to just go into effect anyway.

I don't understand that. We have to create a process to make it understandable and meaningful.

I think that is the only way we can be credible throughout the next 4 or 5 months as we try to meet the Gramm-Rudman targets of $110 billion, especially if we have to approve a tax increase.

These are all basic issues that you may get tired of hearing about. In the public's mind, however, they are very real. So I ask you to consider our legislation.

I ask that the Senate does what it can, as a body, to make other public officials in Government be responsible, even though they are our equal up here on the Hill.

So, Mr. Chairman, I thank you once again, and I would be happy to answer any questions.

Chairman GLENN. Thank you, Senator Grassley. Senator Humphrey, are you ready to go yet?

Is Senator Helms coming over, do you know? I had him on the list? Chuck, do you know if Senator Helms is coming? I had him on the list.

Senator GRASSLEY. He will not be here—well, about now he should be here. He is in Agriculture.

Chairman GLENN. All right.

Senator GRASSLEY. And his staff told me maybe about a quarter to the hour, which I think is now.

Chairman GLENN. Fine. Senator Humphrey.

TESTIMONY OF HON. GORDON J. HUMPHREY, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE [1]

Senator HUMPHREY. Thank you, Mr. Chairman, for the opportunity to present my point of view. I think it is representative of a

[1] See p. 191 for Senator Humphrey's prepared statement.

majority of our fellow citizens and a majority of the members of the Senate.

This whole exercise is quite a lesson in civics, and I wonder what our young people think of it. We know what adults think of this exercise. This past weekend, at home, I was accosted everywhere I went, including in church, by people who are irate about what is going on, and the method that is being employed to secure this pay raise.

They do not wait to be asked. They tell you, right out, what they think of it.

But what worries me most—I know that most adults, by now, are turned off to Congress. What worries me most is what our young people must think of this.

In civics class our youth are taught about the signers of the Declaration of Independence who pledged their fortunes and their sacred honor to create this special Nation of ours.

And our youth are taught that, in most cases, the signers literally lost their fortunes. They lost their fortunes, but not their honor.

Most Americans believe that we, for our part, have lost our honor in seeking a fortune, and when you count the pension benefits we are talking about what most Americans regard as a fortune.

In civics class, our youth are taught that the Founding Fathers designed a system of checks and balances into our Government in order to ensure that human nature would not get out of control, and they are taught that responsibility and accountability are central to our system of Government.

And, indeed, we, in Congress, are big on accountability. We are big on accountability. We regularly haul before our Committees bigwigs and littlewigs alike, from the Executive Branch, and make them account to us, in painful detail sometimes, for their actions, and that is as it should be because we are charged with oversight of the Executive.

We glower down at them, don't we, from our high perch? We make them squirm and sweat before the television cameras. So we are all for accountability except when it comes to us, and our actions. Well, accountability is important. It is the glue that holds our system together.

Unfortunately, we, in Congress, have devised a system under which pay raises are automatic if we can avoid a vote before the deadline. What a perfect system for avoiding accountability. We get the dough and we leave no footprints.

There is a certain evil genius about this scheme, I must admit, and it is evil, because not only does it destroy accountability in an important area. It also destroys whatever tiny shred of respectability is left for this institution among the American people.

As I said, by now, most adults are long since turned off by the shenanigans of this place. But this is what we are doing to the youth of this country.

What must they think of us when we run from accountability as cockroaches run from bright lights?

There will be no votes, as we know, in the House, until February 9th. Well, shame on us, and, indeed, shame falls upon all of us. Not just for the 50-percent pay raise. Shame on us for trying to avoid accountability.

Shame on us for destroying the system of checks and balances in an important area. But most of all, shame on us for setting such a poor example for our youth.

They tumble off the buses here every spring, full of enthusiasm and idealism. They look up at the Capitol. Well what must they think of us? In our society, it grows ever-more difficult for parents to teach patriotism and virtue.

Hollywood lets down our youth too often. Too often, professional athletes let down our youth in disillusionment, and now even we disillusion our youth.

Mr. Chairman, the words of Article I, Section 6 of the Constitution could not be clearer: "The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury."

This provision was controversial right from the start, since critics felt that it gave members of Congress a license to steal from the taxpayers.

But the author of that provision, Gouverneur Morris, a delegate to the Philadelphia Convention, reassured the delegates, saying: "There could be no reason to fear that they—we—would overpay themselves," meaning, of course, that there could be no reason to fear greed on the part of members since pay raises could be secured only by enacting law, and law could only be enacted if a majority in both Houses voted for it.

And the citizens could therefore hold accountable members of Congress at the next election. And the debate at the Ratifying Conventions also makes clear the intent of the ascertainment clause was to provide a check against human nature.

At the Virginia Convention, Patrick Henry worried, not surprisingly, about giving members discretion of their own pay.

He said: "The pay of members is, by the Constitution, to be fixed by themselves, without limitation or restraint."

James Madison rose to defend the clause. He tried to calm the fears of Henry, and others, saying:

> This is a power which cannot be abused without rousing universal attention and indignation. Should the general Congress annex wages disproportionate to their service, or repugnant to the sense of the community, they would be universally execrated. The certainty of incurring the general detestation of the people will prevent abuse.

And similarly, a colloquy during the Massachusetts Ratifying Convention makes clear the deliberate intention of the Framers with regard to Congressional pay.

Said Dr. Taylor, a delegate: "Mr. President, it has hitherto been customary for the gentlemen of the Congress to be paid by the several State legislatures. Why should we leave the good old path?" he asked.

And a delegate, Mr. Sedgwick, "hoped that the gentlemen would consider that the Federal officers of Government would be responsible for their conduct, and, as they would regard their reputations, will not assess exorbitant wages."

"Can a man," he asked, "who has the least respect for the good opinion of his fellow countrymen go home to his constituents after having robbed them, by voting himself an exorbitant salary?"

Obviously, Mr. Chairman, Madison and Sedgwick underestimated the cleverness and the greed of the 100th and 101st Congresses.

I join with Sedgwick in calling it robbery. It is. It is stealing. When one takes something by stealth—and how else can this be characterized than stealth—it is stealing.

A pay raise without a vote in both Houses, a timely vote, is stealing, and such stealing does damage to the public trust far beyond the fiscal costs of the pay raise.

Mr. Chairman, the Post Office and Civil Service Committee back in in 1967—was that the predecessor of this Committee? Does anyone know?

Chairman GLENN. I am sorry. What was the question?

Senator HUMPHREY. Was the Post Office and the Civil Service Committee the predecessor of this Committee?

Chairman GLENN. They combined that in this Committee, yes, while I was part of it. We combined two different Committees that the House has.

Senator HUMPHREY. Back in 1967, this Committee, its predecessor, issued a report which said:

> The Committee is unanimously opposed to any legislative proposal which would vest in the Executive Branch the authority to establish, affirmatively or negatively, the salaries of members of Congress.

They said:

> What we pay ourselves is a constitutional responsibility vested in us, and to be exercised by us. To shirk from that positive duty, by handing the responsibilities to the President, a commission or any other group, and then allowing the recommendation to take effect is an abdication of our constitutional responsibility.

Unfortunately, in 1985, that sage advice was thrown out the window because in that year, without hearings, without testimony, without floor debate in either House, indeed, without the knowledge of Members, an obscure provision was inserted in a mammoth bill that completely overturned the system of checks and balances in this area.

Senator STEVENS. Senator, I have got to object to that. I am the author of that. That request came from the Quadrennial Commission. It was in every report. It was spelled out. You are accusing us of something that is absolutely false, and unless you stop it, I am going to take a point of personal privilege against you on the floor.

That was an Act that was passed by Congress with full notice to everybody. We discussed that on the floor. I will get you my own speech on the floor. Now this idea that it sneaked through—Lloyd Cutler testified here yesterday that the commission recommended it.

If you read the reports that you talk about, you would know that it was requested by the Quadrennial Commission, it was passed by the Congress, passed by the House, and passed by the Senate, without objection—that is true—but it was in the reports. And you could have objected. One Senator could have objected. Why didn't you?

Senator HUMPHREY. Mr. Chairman, if I owe the Senator an apology, and if I have been misinformed, I will certainly issue one publicly, but for now, I will stand by my remarks.

Senator STEVENS. Unanimous consent is still unanimous consent, and you did not object.

Senator HUMPHREY. If I had been aware of it, you may be sure I would have.

Senator STEVENS. Maybe you should see what goes on in the Congress then.

Senator HUMPHREY. In any event, Mr. Chairman, if I may, I will complete my testimony which will not require much further time.

Clearly, the law must be changed to restore accountability, decency and honor. There must be votes, and some say that Congress will never be able to pay itself adequately if we return to the old system. Adequate in whose eyes, Mr. Chairman? Adequate in whose eyes?

We all know the salary at the time we run for election. Public service is supposed to be that, public service, not self-service.

It is possible that some decide not to run for office because they view Congress as a cesspool into which they do not care to discend, and certainly the conduct of the Congress in the past few weeks does not add any perfume to the stench.

The law must be changed, and we need to restore accountability. In the meantime, the pay raise must be repealed, and many of us are intent on just that course of action. The House can hide until February 9th, but it cannot hide forever. The storm will not blow over.

Sooner, or later, the House will have to vote on repeal of the pay raise, and we are intent upon that.

Mr. Chairman, let us all give our young people a modern day lesson in civics. Let us show them that we have the courage to admit a mistake. Let us restore an honorable system for setting the pay for members of Congress, and Mr. Chairman, I hope that the members of this Committee will join in that quest.

Chairman GLENN. Thank you, Senator Humphrey. Senator Sanford.

TESTIMONY OF HON. TERRY SANFORD, U.S. SENATOR FROM THE STATE OF, NORTH CAROLINA

Senator SANFORD. Thank you very much, Mr. Chairman, and members of the Committee. I think, though I had not intended to put this in my remarks, that perhaps I had better put in a word for the honesty of the Congress, and for the following of law.

Indeed, we are precisely following the law as provided in the Constitution. The law is that a commission, ultimately, with the recommendation of the President, says to the Congress the salary should be thus and so. That is a reasonable way to handle a very difficult conflict of interest, and I think it was a very wise way for Congress to go.

I do not think there is any question about the honesty of Congress, and I do not think we set a bad example for young people.

I think we are up here doing our duty. The question now is whether or not it is appropriate to take a raise that has been set by careful thought and consideration and approved by the President. It is available as a careful judgment, that this is an amount that this job justifies, and that similar jobs in the Administration, the

White House, the bench, justify. This judgment was made by thoughtful people who were not trying to steal from the Government, but who were trying to come to an honest judgment.

My position, and my reason for putting in a bill to disapprove the raise does not go to the legitimacy of the Commission.

It goes simply to what is proper at a time when we are facing financial strains and stresses, the likes of which this country has probably never faced.

We have seen the national debt triple in the last 8 years. We have seen a level of fiscal irresponsibility in paying for what we have been buying.

It seems to me that it would be simply better taste to not raise our salaries now until we get the deficit, and more important, the debt under control. It is for that reason that I have objected to taking the raise and why I put in the legislation.

I just think it is not quite the time to increase our salaries until we get some of our other problems under control.

Thank you very much.

Chairman GLENN. Thank you. Senator Helms.

TESTIMONY OF HON. JESSE HELMS, U.S. SENATOR FROM THE STATE OF, NORTH CAROLINA [1]

Senator HELMS. Thank you very much. I had an Ag Committee meeting this morning at which the cost of operating the Committee was elevated by 10 percent. That is standard procedure around this place. You walk in, and with no dissent, and the cost of operating the Congress is going up and up, and up.

I happen to be sort of a veteran, I will say to my friend, Senator Lieberman. I was here with the Senate, not in the Senate, in the early 1950's. Since then the cost of operating the Congress of the United States has exceeded $1 billion a year.

Now, when all is said and done, all has been said and done, Mr. Chairman. But the thing that gives me heartburn about this whole procedure is the diminution of respect that it causes for the Congress of the United States.

All across this land, people are saying, in one way or another, they are a bunch of crooks. It is not so. But this thing has hit them where it hurts, in their pocketbook. They understand that they cannot raise their salaries automatically, deviously, or otherwise.

So they are resentful, and properly so, to hear 535 men and women come home every time they can, preach the doctrine of a balanced budget, and then come right back up here, and by one means or another, propose to accept a recommendation that their salaries be increased by 50 percent.

Now I have heard all the arguments. I have gotten all the letters. I have even had one Federal judge to write to me in favor of the pay raise, and he is going to take senior status shortly.

But when it comes to judges, when it comes to Congress, when it comes to the bureaucrats, it is hogwash to say that anybody is starving to death.

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[1] See p. 196 for Senator Helms' prepared statement.

Everybody who ran for office, or otherwise sought office, whether it be for judge, or Congress, or in the bureaucracy, knew exactly what the compensation was going to be.

And that compensation is a sight more than that of the average guy who pulls up his socks, grabs his dinner pail, and goes off to work in the morning. It is a sight more than he will ever make.

Now, I recommended to the White House that President Bush try to withdraw the recommendation so that another look can be taken at it. I think the whole system ought to be abandoned. I think it stinks. The American people think it does.

But when we elevate—by whatever means—hook, or crook, or otherwise—the highest level salaries by 50 percent, then the whole Federal salary structure is going to be raised.

So I am glad the Senate is going to vote on it. I do not know what the House is going to do. I hear mixed signals this morning. But I will say to you, Mr. Chairman, the ultimate damage that is going to be done is absolute diminishment of the respect of the people of the United States for this Congress. If we go ahead and accept this proposed salary increase we will have done serious injury to an institution which means a lot to me, and has since I was a little boy.

I never dreamed that I would have the privilege of serving in the United States Senate.

Let me read you just one paragraph from a letter from the Farm Bureau Federation, and I think it sums it up well. It says it all.

> Public service in the United States Congress is a choice that individuals willingly make with full knowledge of the compensation offered. To increase Congressional salaries at a time when many other sectors of the Federal budget are being frozen, or cut, is irresponsible.
>
> There is no doubt that most members of the 101st Congress are hard workers, but until the budget crisis is solved, farmers and ranchers believe that members of Congress should make a personal statement and sacrifice in terms of deficit reduction by voting against a pay raise for themselves.

Now that is it. That is what the people all across this country are saying. They say if it ever is the right time to increase salaries, it is not now, not when we have a Federal debt that is in excess of $1.6 trillion. The Congress is responsible for that debt, and the Congress is responsible for the deficit. You cannot lay the blame for it at the White House doorstep; it is our problem. We created it, and I join my colleagues, here, at the table this morning, in hoping that some way it could be worked out to avoid the folly of a further diminishment of respect by the people in the Congress of the United States.

Thank you very much.

Chairman GLENN. Thank you, gentlemen. We are going to have 5-minute questioning today. We had 10-minute yesterday. It extended things out a little bit too long, so we will stick with 5-minute rounds today, and try and keep things a little shorter.

I would ask, does your legislation include anything on honoraria? Anybody who wants to answer.

Senator GRASSLEY. No.

Chairman GLENN. Why did you not include that, because, you know, I have a lot of sympathy toward thinking that 51 percent is too big a raise, and I have not decided exactly where I am going

with it. But a second proposal, I think absolutely we should pass, is something on honoraria. I think that has gotten into being a Congressional disgrace.

Why did you not address that?

Senator PRESSLER. I certainly support the ban on honorarium. I believe it is coming to another bill. I would not object to it being in this bill. We are trying to address the resolution of disapproval specifically, but I would not object to having this legislation expanded, if that was to be included here. But as I understand it, that is being negotiated out. There is going to be a separate bill on it. I certainly support it.

Chairman GLENN. Does everyone agree with that? Does everyone agree that the honoraria should be knocked out completely, in toto?

Senator HELMS. Mr. Chairman, I have no objection whatsoever to its being eliminated. I will say that I have never been the beneficiary of some of the horror stories that I hear others talk about with respect to vacations, and that sort of thing.

And I think it is an interesting question whether, on our own time, we ought to be precluded from making a legitimate and respectable appearance. But to answer your question: Yes, sir. If we can stop this foolish pay raise, I will be glad to never take another honorarium.

Chairman GLENN. One additional question. Let's say that this does not go through, that the pay raise is defeated as you hope it will be. Would you then propose, or would you accept de-linking Congressional pay from all the other pay across Government? Civil service technicians, scientists, the people that we are trying to get into Government and cannot get because we are not competitive?

There has been testimony that we cannot get the scientists at NIH. They have not hired a top medical scientist in 10 years, so they are going out and setting up programs outside to bypass normal procedures, and with for-profit firms to do certain research. Under these arrangements, they have the scientists that they can pay $150,000 or $175,000 a year, and be competitive with Merck and Pfizer and everybody else that is trying to hire the same people.

So we are wasting money by the millions right there.

Senator PRESSLER. I would certainly support——

Chairman GLENN. How do we cope with that situation where we need good people?

The question is: Would you favor de-linking Congressional pay from civil service, and from the judicial considerations?

Senator PRESSLER. Well, I would support that decoupling, and in fact our bill would in effect do that by requiring votes on future Congressional pay raises. It is my feeling that the Constitution says Congress shall set its salary.

I think that should be a separate matter, and the bill that we have, although not perfect, and we are open to suggestions, does accomplish that or would accomplish that.

But let me say, as we circulated this piece of legislation in December we tried to get it to a consensus of what several members could agree upon in terms of a resolution of disapproval, that would put pressure on the House to vote, that would guarantee a vote on future pay raises.

There are a number of other ideas that I may support, and others may support, but certainly decoupling is something that this legislation would accomplish, if passed.

Maybe Senator Grassley can address that better.

Chairman GLENN. I am not sure I follow you there as to how just requiring a vote on Congressional pay would de-link it from everything else. I do not think that would do it.

You need something where you can go out—if our pay is to be held, and our pay is to be the standard here, that you will not exceed elsewhere in Government, by and large—then we need some way to go out and get good people, or we are going to wind up with the Departments contracting outside and wasting far more money, it seems to me.

Senator PRESSLER. Well, I would support decoupling, if it is coupled, and our legislation would say that future Congressional pay raises would be voted on separately.

However, if you would like to add an amendment to this legislation that would make it clearer, I would support it.

Chairman GLENN. Senator Humphrey, yes, go ahead.

Senator HUMPHREY. Mr. Chairman, I, too, support decoupling, but let us not weep too many tears for the Senior Executive Service, nor the Judiciary.

In 1987, the last year for which I have been able to secure figures, there were 6,225 members of the Senior Executive Service. Fewer than 2 percent—in fact it is 1.7 percent—left in that year for reasons of—for resignation.

I am told that in the private sector that if fewer than 2 percent leave voluntarily you are paying your people too much.

Now there is a real problem with scientists and others, as you point out, but it does not follow that we have to pay all 6,000 some-odd members of the Senior Executive Service as though they were scientists.

And with respect to the Judiciary, let us remember our brethren in black robes get paid full salary until the day they die. That is not even retirement. That is not even a pension. That is full salary until the day they die, and that is a very valuable asset, obviously, and that ought to be taken into account when setting their salaries.

Chairman GLENN. My time is up. Senator Stevens.

Senator STEVENS. Do I understand each one of you oppose the Quadrennial Pay Commission entirely? You do not want it to go into effect?

Senator GRASSLEY. No. Do you mean the entire principle of the Quad Commission? Are you questioning our recommendations on how the Quad Commission should operate in the future?

Senator STEVENS. No. I am talking about this request. This request for the Judiciary, the Executive Branch, and the Congress. Your resolution disapproves them all, doesn't it?

Senator GRASSLEY. Yes.

Senator STEVENS. I see. I put in front of you a chart that showed the salary increases from 1970 to 1988.

Have any of you ever supported a pay raise since you have been in Congress?

Senator GRASSLEY. I have not.

Senator STEVENS. I do not remember any one of you supporting a pay raise since you have been here.

Do you realize the net result of your failure to do that is that the Federal civilian service was adjusted in that period of time, on that chart, 132.6 percent, while the CPI has gone up 204.5 percent?

In other words, you have held Federal civilian salaries to less than their 1969 salary. Did you know that?

Senator HUMPHREY. Are you talking about the Senior Executive Service?

Senator STEVENS. Yes.

Senator HUMPHREY. Well, the fact is that less than 2 percent have left in 1987 by virtue of resignation.

Senator STEVENS. Well, let me tell you: that is because a lot of them left before they got there. I will get into that on the floor.

Senator HUMPHREY. How many layoffs have there been?

Senator STEVENS. But, again, this bill covers about 2,500 people.

Senator HUMPHREY. How many layoffs have there been, Senator Stevens?

Senator STEVENS. This bill covers 2,500 people, not 6,000. 2,500. The net cost to the Government is $72 million. $72 million, if this went into effect. Now what does it cost the Government to have incompetent people at the top stay in because the competent ones leave and go out?

Senator HUMPHREY. Fine. De-link it; de-link it. We are all for de-linkage but we all want accountability for Members of Congress.

Senator STEVENS. Because if you de-link it, then you will not have caused the pay increases.

Senator HUMPHREY. We all want accountability for Members of Congress. That is what your legislation severed, Senator Stevens, and that is what needs to be fixed.

Senator STEVENS. Now let's get that straight. When I came to Congress there was a bill that was in existence then that had a one-house veto. One house, by resolution, could veto the Quadrennial pay report.

This commission, in 1985, when I was Chairman of the Subcommittee, reported to Congress that the effect of the *Chaddha* case of the Supreme Court was that any bill that provided for a one-house veto was unconstitutional per se.

It recommended that we make that provision of the law apply the constitutional principles, as interpreted by the Supreme Court, and require that the vote of two houses must be taken to veto a Quadrennial Pay Commission.

Senator HUMPHREY. Yes. And who asked——

Senator STEVENS. And you still say that I made it so that one house could not vote?

Senator HUMPHREY. And who asked for the automatic provision that makes the pay raise automatic, if one house or the other does not act? Who asked for that?

Senator STEVENS. It is in the law. It was there before my bill. If one house did not veto within 30 days, the old Quadrennial Commission law, it became effective.

Senator HUMPHREY. Well, that was a bad system and this does not improve upon it. It makes it worse.

Senator STEVENS. Well, that may be.

Senator HUMPHREY. We should have reverted to the earlier system.

Senator STEVENS. Let's go back to the Constitution. You all talk about the Constitution. The Constitution says that: "The Senators and Representatives shall receive compensation for their service to be ascertained by law."

Under that constitutional provision we could give the job to the Supreme Court as long as it were ascertained according to the law.

Senator HUMPHREY. Is that the Senator's clear understanding from reading the intent of the Founders?

Senator STEVENS. That is the Constitution.

Senator HUMPHREY. But has the Senator—I know the Senator has.

Senator STEVENS. I have. I have at length.

Senator HUMPHREY. Does the Senator think that is what the Founders intended?

Senator STEVENS. No. I think that is what the Constitution says.

Senator HUMPHREY. What about the intent?

Senator STEVENS. We have had a challenge of this law. You challenged it.

Senator HUMPHREY. It was never the——

Senator STEVENS. Do you believe the Supreme Court, Mr. Humphrey? Last year the Supreme Court——

Senator HUMPHREY. The Court denied cert. The Court denied cert.

Senator STEVENS [continuing]. Denied certiorari on a case that you took.

Senator HUMPHREY. It did not get to the substance, did it? It said it is a political issue and it threw it back to us.

Senator STEVENS. I am sure that it was unconstitutional. I wish we had time to debate in front of the American people, really debate, and I urge you all to come to the floor, and let's have good old-fashioned debate as to what you have done to the civil service of the United States.

I do not care what you say about Congress. Let's exempt it out. And I believe we ought to exempt it out. I tried, by constitutional amendment, to do that, and you would not pass it. Did you ever support the constitutional amendment that the Supreme Court could set the salaries of the Congress?

Senator HUMPHREY. I certainly would not vest that in the Supreme Court.

Senator STEVENS. Who would you give it to?

Senator HUMPHREY. Well, I would not vest it in the Court. Come up with another idea.

Senator STEVENS. Would you give it to Senators who have never yet voted for a pay raise for anybody?

Senator HUMPHREY. I think the Founders had the best idea, and that is a system of checks and balances with real accountability.

Senator STEVENS. Well, I shall make the case, Mr. Chairman, that those who oppose this pay raise really are opposing adequate compensation for the people who work for the Government. The civil servants and the judiciary.

If you really believe what you say, change that bill and just exempt Congress, and I will vote for it. Just change it and I will

vote for it. Exempt just Congress, and totally de-link the compensation of the Congress, with all executives, and change the law which currently says that no civil servant can be paid in excess of the rate established for Grade 5.

After you become a general today, a two-star general, you can never get a pay increase. You can go to three-star, four-star, five, it will not make any difference. You will not get a pay increase.

I forget what it is. I think it is after you get to Grade 6, and GS–17, you cannot get a pay increase. You can take all the additional responsibility you want. You get no pay increase because of the linkage.

You have never attacked the linkage. Why don't you attack the linkage? If you want to pay Congress, it is all right with me, but you ought not to impose this on the Civil Service Community.

Senator HUMPHREY. Is the Senator prepared to return to a system where Members of Congress secure a pay raise by affirmative vote of both Houses of Congress, signed by the President?

Senator STEVENS. I will do that as soon as you vote for one. As soon as you vote for one, I will do it.

Senator HUMPHREY. I will support de-linking, but you will support a return to accountability. What about it?

Senator STEVENS. I am going to stay here if you return the salary of the Senators and Congressmen to zero. I love the place and I have got a duty here.

Senator HUMPHREY. That is a red herring, like this.

Senator STEVENS. But who is going to come after us? When a graduate from Harvard, or Yale, or Michigan, or Stanford, California law school can come to this town and get $80,000 a year plus a $20,000 a year bonus, right out of law school, how many people are going to set their career goals to come here unless they are multimillionaires? You cannot answer it, can you? Thank you, Mr. Chairman.

Chairman GLENN. Senator Lieberman.

Senator HUMPHREY. I could answer. I would be happy to answer.

First of all, serving in Congress ought not to be a career. It ought not to be a career goal. That is part of the problem. We have too many people who hang around here forever and who put the interests of reelection ahead of the best interests of the country. So that is your answer.

Chairman GLENN. Senator Lieberman.

Senator LIEBERMAN. Thank you, Mr. Chairman.

Members of the Senate, as I hear the discussion, it seems to me that you are saying two things about why you are opposed to the pay increase.

One is that it is too much at this time, particularly because of the budget deficit, and secondly, you do not like the process because of the lack of accountability.

My first question may have been answered in response to what Senator Stevens asked: Would any of you support a lower pay increase at this time? That is to say, lower than the recommended 50 percent increase? A cost of living increase, let's say.

Senator HELMS. Not under this system. I think the system is bad.

Senator PRESSLER. I would join in that. I would say that there are times when a pay raise may well be appropriate in view of the

budgetary deficit, but also, the system under which this thing is being moved forward would cause me not to do so.

I will not support a pay raise under this——

Senator LIEBERMAN. Of any kind?

Senator PRESSLER. Under this Quadrennial, automatic system.

Senator GRASSLEY. I want a system in which I can vote up or down on a pay raise. I told my constituents I would vote for a pay raise when Congress balances the budget.

Senator LIEBERMAN. Okay.

Senator HUMPHREY. My response, Mr. Chairman, would be that if we have an affirmative vote in both houses, signed by the President, I would support a cost-of-living increase from time to time as it could be justified.

Senator LIEBERMAN. Thank you. Senator Sanford.

Senator SANFORD. I think the reasons for not voting for an increase now would apply to any amount. I would like to see us find ways to promote the scientific endeavor of the Government which we are not doing adequately. I would like maybe to think about, perhaps giving block grants to the National Institutes of Health, and similar institutions, and letting the governing bodies there set salaries as some of the major universities do, in order to be competitive.

The legislature does not put line-item salaries in for that type of employee. They are quite distinct from civil service, and quite distinct from congressional service. De-linking would not solve all of our problems, but maybe we can get at that and get around the other prohibitions in the law, and get at what I think is the most crucial shortage right now.

Chairman GLENN. They had—and I will not belabor this because we want to get on to our other witnesses here. We are going to run out of time again this morning.

But there was just such a proposal as that last fall, and the sponsors of it on the Senate Floor were looking for support. I talked them out of putting that in last fall with the idea that we were going to try and address the whole Federal pay scale this year with the Quadrennial Commission.

And it goes farther than civil service. It goes down into military pay, not just the generals that Senator Stevens already mentioned, but it goes on down the whole pay scale.

We have tied up what we do in the military because that is tied to civil service. Civil service is tied to us. Executive level is tied to us. And so that is the problem.

And I say, as I said before, I have my own set of problems with making a 51 percent leap all at one time, and the fact that the honoraria was not included in this, I think that is a big problem. I find it difficult to make that kind of leap of faith, where I am going to say, well, we will just vote the pay raise out but then we will just trust people later on to pass the honoraria ban.

That is a little leap of faith I would like to see made in advance. I would like to see the honoraria knocked out first. Then maybe some others can make a little leap of faith in where we are going with pay scales, but this is a different subject.

But we promised people last fall, that we would address some of the civil service pay issues that have to be addressed. If we cannot

get agreement on pay raises, we may have to go to just what you are talking about, a block grant, and let individual agencies decide.

Maybe they can pay some scientists $175,000 or $200,000 to come back in for a period of time, or whatever. That will have its own set of problems, if we have to do that. I know we are in bad shape and I know that we need some action in our civil service-one thing that really galls me when people talk about civil service, is the belief that just anybody will do: you can just call somebody in off the street and fill in one of these jobs. And I know that is not possible.

I know that in our free society, you have to have some method of compensating people. We talked about the judges yesterday. Do we want a judge that is the least we can get? America got to be what it is because we tried to have the best people in the best places. Those people with the background, the education, the judgment, that took on the new responsibilities and led us on to new heights.

Now, if we settle for less than the best people going into those positions, then what happens to decisions on civil rights and air safety, banking and antitrustlaws? And you can go through the whole thing: the drug war, nuclear clean-up, education, and research.

Senator GRASSLEY. Mr. Chairman, I'd like to address your comments on the judges: I have been a member of the Judiciary Committee for 8 years. Even though I am not a lawyer, I think I can recognize when there is a problem and when there is not a problem, as far as the Judiciary is concerned.

You should know that people are standing in line to be District Judges, people who are senior partners in major law firms.

Chairman GLENN. But the point I am making, Senator——

Senator GRASSLEY [continuing]. Many are law professors.

Chairman GLENN. Are they the best?

Senator GRASSLEY. We are talking about people that our society has recognized as the best. As law professors, and senior partners in major law firms in major cities, who want to be on the Judiciary, they are the best. The answer to that is yes.

We have got outstanding lawyers, standing in line seven deep, as one Senator reported to wanting to be judges in his State. I would like to raise a point of information: Out of 27 vacancies on the Judiciary right now, only three are from resignations, and seven are from deaths.

Chairman GLENN. Well, our testimony yesterday was quite the opposite on that, and I think it is important that we de-link, if the pay raise does not go through: and I may well vote against the pay raise—I do not know—because of the 51 percent amount and the lack of the honoraria ban, I may vote against it but there are going to be many votes on the floor on this, as I understand it, with different proposals before we get through, so we are going to have adequate time to talk about this.

But I am very concerned about the same thing Senator Stevens is concerned, that on civil service, and getting good people in to Government, we cannot settle for anything less than the best we can draw in. That is for sure.

Yes, a comment? Go ahead, Senator Lieberman.

Senator LIEBERMAN. Just one more question on the second part of what obviously concerns all of you, and that is the process. This is an awkward business of setting our own salaries. I certainly did not come down here, as a newcomer, to raise my pay by 50 percent, but sometimes there is no other alternative but to have the Congress make these decisions.

Is that what I am inferring from all of you? I understand, very clearly, that you do not like the lack of accountability in this. There is a little bit of indirection here.

But what process would you recommend? Does anyone recommend anything other than having it always come to a straight up or down vote in the Congress?

Senator PRESSLER. I recommend we do it in a straight up or down vote, the way we do with normal appropriations, and not have automatic version to it.

Senator SANFORD. Well, let me add, that I think it is a conflict of interest to have a straight up and down vote. I like this system, and I think it probably has all the safeguards we need. We just happen to be in a time of depressed Federal income and it makes it inappropriate.

Chairman GLENN. Good. Thank you, gentlemen. We appreciate it. We might have additional questions we would submit to you for completing our Committee records. We would appreciate your response to it, if we do. Thank you much.

The next witness is Mr. Ralph Nader, consumer advocate, accompanied by Joan Claybrook, President of Public Citizen.

Mr. Nader, Ms. Claybrook, welcome to our hearing this morning. We look forward to your testimony, or an abridged version, whichever you prefer, and in either event your entire statement will be included in the record, as if delivered.

Ms. CLAYBROOK. Mr. Chairman, I would just like to introduce Mr. Michael Siegel, who is also here with us from Seattle, Washington, with the permission of your staff. He is here to answer any questions that anyone might have. He is an attorney and a Ph.D. in speech communications from the University of Utah, and he is a talk-show host who is one of those who has been talking to 1,000s of Americans during the country during the course of this issue. So he is here to answer any questions.

Chairman GLENN. He is the one where I now have a 10,000-year supply of tea bags? Is that the——

Ms. CLAYBROOK. He is one of them. Yes, sir.

Chairman GLENN. Fine. Mr. Nader, proceed.

TESTIMONY OF RALPH NADER, CONSUMER ADVOCATE,[1] ACCOMPANIED BY JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN, AND MICHAEL SIEGEL, ESQ.

Mr. NADER. Thank you, Mr. Chairman. Thank you for holding this public hearing on President Reagan's salary raise proposals which he conveyed to the Congress on January 9th.

I would also like to welcome Senator Lieberman, a new Senator from Connecticut, my home State.

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[1] See p. 199 for Mr. Nader's prepared statement.

Senator LIEBERMAN. Thank you, Mr. Nader. Because I may have to leave, I wanted to welcome you. I know people think of you as a national figure, but we, in Connecticut, consider you the pride of Winsted, Connecticut. It is my pleasure to be up here to welcome you today.

Mr. NADER. Thank you, Senator Lieberman. And of course Senator Stevens, from whom I am sure we will hear more in a moment.

Senator STEVENS. We have been across the table before, Ralph.

Mr. NADER. I would like to focus my comments on the procedure by which the salary increases are considered. I am sorry to see the disagreement in the Judiciary over what I believe is a plain reading of the Constitution, Article I, Section 6, which says that: "The Senators and Representatives shall receive a compensation for their services to be ascertained by law."

Somehow I believe that the Founding Fathers did not envision an indirect delegation of this responsibility followed by a process where, if both Hcuses do not vote in 30 days following the President's recommendation, the increases go into effect.

I think we have to recognize something very important, and that is the fact that 85 percent of the American people are against salary increases at this time does not mean that they are automatically wrong.

When I look carefully to letters that they are writing, they are not just expressing rage, they are expressing rage of a particular type, namely that they did not want their political rulers to be too distant removed from them in terms of their economic state; they want their political rulers to be able to empathize, feel, reflect, share the common concerns and anxieties that everyday Americans feel.

In other words, the relation of citizens to their political representatives is a relational one. They did not say, well, the new law school student out of Harvard going to work for a law firm in New York is making $70,000 a year; they did not make comparisons largely with a private sector marketplace salary levels.

What they do is they compare their own situation, the situation in the country, the kind of Government that these officials have presided over, and these relational estimates are reflected in very pointed examples in their letters.

Now, are they wrong to do that? Are they wrong to believe that public service and the salaries for public service must have some relation with what ordinary people earn, and must have some relation with the kind of Government that has been operating. I did not think they are.

I think many of them do support the obligation of making sure that the taxpayer provides a decent standard of living for high Government officials. And there is where there is a difference in perception.

There are people in Washington in the upper echelons of officialdom who believe that $89,500 a year plus a generous pension, health insurance, life insurance benefits, and other benefits and perks represent a decent standard of living. Excuse me. It does not represent a decent standard of living.

I had one former Treasury official make this statement to me. He said one should not have to incur impoverishment in order to

ably serve in the Federal Government. Impoverishment, according to his definition, is $89,500 a year plus a wide array of benefits. That level is five times the average wage in this country and at least 20 times the average benefit level.

Now, if you go down to America in whatever region, whatever class, whatever gender, whatever age group, you will find absolute astonishment that $89,500 can be considered a level of impoverishment. If that level is one of impoverishment, then I submit that the President should establish a national economic emergency for the rest of America, and we should look into this dictionary for some other word than impoverishment to describe the 99 percent of the American people who earn less than these top Government officials are earning at the present time.

So I think it is quite important to respect this relational appraisal and not to try to develop a private sector marketplace model which you can never attain, never come close to, if you take the corporate law firms and the top corporate executive salaries and bonuses, et cetera, in this country.

Now, the arguments by the Quadrennial Commission are that, first, the salary levels need to be increased in order to get quality people. I find no historical evidence, ancient, medieval or modern, to support that proposition. In fact, we have seen again and again at the city and State level, when they have raised the salaries significantly, that there is no correlation with the quality of work done, there's no correlation with the quality of recruitment.

First of all, these top Government officials are political appointees for the most part. They get jobs as Secretary of Interior, Secretary of Defense, Federal judgeships, because of their political loyalties and their political complexion.

If the Secretary of Defense position was paid a million dollars in 1981, Mr. Chairman, I did not think anyone other than Caspar Weinberger would have been chosen by President Reagan, and I did not think that at a million dollars a year, Caspar Weinberger would have been more diligent in rooting out waste, fraud and abuse in the Pentagon.

The same is true for the Secretary of Interior in James Watt. You are dealing here with political appointments. Money has never bought integrity, dedication or commitment. Beyond a decent standard of living, which is one that is appraised by most people in this country certainly to be in accord with the present salary levels of the higher and higher salaries simply increase the incentive for richer people to take a few years out and not have to step down too much in your salary scale and take these Government jobs.

For 99 percent of the American people from which a pool of talented people can certainly be recruited to fill the 2,700 jobs involved in this Presidential recommendation, there are plenty of good candidates.

A second argument that was used by Mr. Cutler of the Commission is that higher salaries are needed to keep these officials on the job and not leave for the private sector. A 1 percent or less attrition level for Federal judges since 1974 is not exactly a significant attrition level. It is the lowest attrition level I know of in any institution in the country. In fact, I think many of us would want a little higher attrition level given the fact that sometimes these

judges did not work out very well in either incompetence or in dedication.

As far as Congress is concerned, 99 percent of the House of Representatives was reelected, and there are certainly plenty of people who would like to replace the incumbents if they could possibly do so, possessed of quality and competence.

As far as the Executive Branch is concerned, we did interviews of top Government officials in producing our book, "Reagan's Ruling Class." And we interviewed the Cabinet Secretaries, the Sub-Cabinet Secretaries, and we found that many of them had no intention to stay very long in Government. They wanted to dismantle this or that regulatory agency, get off of corporations' backs, and resume their career in the private sector to make more money for themselves.

I think that, given the quality of the top officials in the Reagan Administration, we would want them to leave in greater numbers. We wouldn't want them to stay. It is not automatically good to have these top officials stay long, for long periods of time.

Many former Government officials have told me that they felt that they became stale after 4 years or 5 years, and even civil servants at the top level have told me repeatedly throughout the years that, after 10 or 15 years, they seem to have plateaued and aren't creative and are just putting their time in because it is a good job.

Now, they are not, of course, willing to testify publicly to that. But I think we know from experience that, in most jobs, the creative period is at the beginning and, after awhile, that creativity begins to decline.

Of course, the best way to attract quality people, Mr. Chairman, is to have a quality Government which is in the minds of the people, not in the pocketbook that they replenish every 2 weeks. The reason why some scientists from OSHA and EPA have left Government in the last 8 years is not because of lousy salaries but because of lousy Government, lousy Government policies, not fulfilling the aspirations of saving lives and cleaning up the environment for present and future generations.

Now, the procedure it—and by the way, in terms of inflation, we can get into that, but selecting 1969 is what statisticians say is selecting the outlier figure. That was the highest pay increase to date in the history of the Congress. They took that and multiplied it by the inflation rate.

If you have as your standard 1900 when Congress was paid $5,000, or 1930 when Congress was paid $10,000, and subsequently reduced its pay, by the way, to set an example for the country in the midst of the depression, Congress reduced its salary, or if you take 1946 or 1954 or 1964, the salaries have more than kept up with inflation at $89,500. If you take 1980, they have kept up more than inflation. Which year do you choose? You could choose an average of many years, or you could choose the base year 1900, or you could choose the year where less than half the Members of Congress are still around.

I remember hearing Speaker Jim Wright say that slightly more than half the House of Representatives were not in the House in 1980. But you certainly did not pick one year, the highest year,

what the statisticians call the outlier figure, and try to do your multiplication.

The procedure, of course, is what is upsetting most people, Republicans, Democrats, Independents alike. I believe Congress should do what it did for almost 200 years, hold public hearings on salaries, decide whether they want to link or de-link, decide what they want to pay judges or themselves or Government officials, decide what kind of bonuses they want to pay, and have public hearings, and then have floor debate, and then vote, affirmatively, up or down, to send the bill to the President.

That holds Members of Congress accountable. Adopting the James Madison Amendment by statute, if not by Constitution, would make sure that any salary increase for members of Congress would take into effect after the next election so that the public could vote more precisely on their performance.

By the way, the James Madison Amendment, Mr. Chairman, has been ratified by 19 States. It is still very much alive in this period, almost 200 years after Mr. Madison unsuccessfully proposed it.

That is the way it should be done. Now, we can all differ about what levels; we can all differ whether some civil servant who found a way to save a billion dollars in the Pentagon should get a bonus, but I did not think there should be that much disagreement over the procedure that needs to be followed. I think people around the country want this to be a public hearing process, want the roll call vote, want the debate on the floor.

Now, what have we gotten instead? We have gotten a Senate, which is holding public hearings today and yesterday, good. We have gotten a Senate that is going to debate it. We have got a Senate that is going to vote on it. Some people think that the Senate is performing this way because they know the House is not going to vote. Be that as it may, certainly on paper, the Senate is proceeding in a fair and accountable way.

In the House of Representatives, we have a situation that borders on the disgraceful. Until Chairman Wright's survey, there was every expectation that the House of Representatives was going to continue to go on strike, that its Members were going to play hooky until February 8th when the salary increase would go into effect.

Two years ago, the House Civil Service and Post Office Committee held hearings, and the resolution was blocked or voted down by the Committees, and the 30 days tolled. And on the 31st day, Mr. Wright opened up the House for a vote. There was a whooping voice vote "no," and then the Representatives went to celebrate and took the dough, knowing that it was too late.

This year, it is even worse. This year, Chairman William Ford is not holding hearings in the House Post Office and Civil Service Committee. This year, there was no scheduled debate on the floor. There was a pro forma session put into effect. That means no business of any substance would be conducted on the floor of the House. The House was, in effect, on strike until they get their raise. That has to be unprecedented in American Congressional history, and it has to tell us something very important, and that is that the Members, want to stand up to the American public, which is overwhelmingly against this raise, by not voting, by not allowing a 1-minute statement on the House floor by members who dissent,

and by not having hearings. I think this is a disgraceful and cowardly performance, and I hope that the survey of Mr. Wright will indicate that the majority wants a roll call vote.

A group of citizens groups, including Public Citizen National Taxpayers Union and others, have just completed a member by member survey of the House of Representatives.[1] According to this survey, which was done by telephone, member by member, 270 Representatives said they would vote against the pay raise if it came to a vote. And that is approximately 62 percent of the House. 47 Representatives, or 11 percent, of the House said they would support the raise, people like Congressman Tony Coelho who said that leadership means going against public opinion some times. One would hope that that leadership would also allow a record vote. 75 members, or 17 percent, refused to state their position, and 41 members, or 9 percent, refused to respond at all.

Of those willing to take a position on the survey's question, 85 percent said they opposed the raise. That would certainly argue, in my judgment, that there should be a record call vote.

So I would recommend, Mr. Chairman, that the Congress pass legislation that would reestablish the old procedure whereby there would be public hearings, and no salary increase would go into effect without a record roll call vote on the floor, and a signature by the President.

Government by procedural hypocrisy is bad for democracy. And I think there is no room for the kind of behavior which we are observing now in the House of Representatives. Why is this of such concern to so many people? I think it is because the salary increase that President Reagan sent up symbolizes what people think is so arrogant and indifferent about Washington officialdom where these officials have been presiding over massive deficits, not doing anything preventive about the scandals which have ridden the Administration, telling the people around the country there is not enough money for Head Start, there is not enough money for special education, there is not enough money for legal services for the poor, there's not enough money for school lunch to keep up with the demand, there's not enough money for infant nutrition programs, there's not enough money for low income housing and emergency shelter grants. All of these in real terms were reduced by Mr. Reagan's budget.

But wait, folks, there's enough money to increase our salary 51 percent. That is the kind of leadership by self-seeking hypocrisy, not leadership by example. Leadership by example in the political realm is extraordinarily important to solicit the respect and support of the American people for their Government.

On the other hand, if this pay increase goes through under this kind of procedure of not voting, it will symbolize the powerlessness of the American people to do something about an issue they care very much about.

I think I need to say something about the intimidation factor, Mr. Chairman, and then I will conclude.

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[1] See p. 248.

This salary grab is corrupting, intimidating or demeaning almost everything it touches. Starting with the Presidential Pay Commission, or the Quadrennial Commission, composed entirely of multimillionaire or millionaire corporate executives and lawyers, who have cases before Federal judges and bills before Members of Congress that they either oppose or propose, and from whom members and judges they seek favorable decisions. These gentlemen, and they were all men, no workers, no farmers, no women, no minorities, no one representing America; in fact, the millionaires were in the majority on the Quadrennial Commission, these men had no business being on this Commission.

There were thriving conflicts of interest in leading the charge to raise the salaries of the very people they want favorable decisions from. No one, including public interest lawyers who have cases before Federal judges and bill before Congress, should ever be appointed to these Quadrennial Commissions.

It goes to the President. The President proposes without change the raises. He also increases his own pension 56 percent. It goes to the President on January 9th. President Reagan then leaves office. The 30 days start ticking from January 9th.

The dissenters in the Senate and the House, some of whom have told me have been subjected to the kind of collateral intimidation that really is unbecoming to the leadership, particularly of the House of Representatives.

Members have been threatened with not getting Committee assignments. They have not gotten their calls returned from the leadership offices. They are getting the freeze in ways that I think are unbecoming.

It is one thing to go up to a Member and say you are dead wrong, I think you are insupportable in your arguments, I disagree with you. But to start imposing collateral intimidation is wrong.

When Members of the Congress feel more pressure internally from their leadership than they feel externally from the people out there, then we have got a real problem I think of independence of judgment which we hope to accord, and we would be accorded every Senator and every Representative.

Citizen groups themselves have been given indications that their favorite bills will not be treated with full recognition if they take a strong stand against the salary increase. Trade unions are not opposing this because they want their own priorities to be given high attention. Trade associations, corporate law firms, and other corporate lobbies are very happy to push for higher salaries from the very people they want to ingratiate themselves to.

I did not think this whole process reflects very well, and the reason why you have intimidation and this demeaning behavior and this corrupting conflict of interest by the Quadrennial Commission is because you have deviated from the almost 200-year procedure of Congressional public hearings, roll call votes, sending the salary recommendations to the President for a signature.

And I hope that you will return to that process with one further amendment, namely the James Madison Amendment, that any Congressional salary increase will take effect only after the next election.

Let no one in this body forget that any salary increase that goes in this year will be followed by the 10,000 Executive Service Corps, will be followed by people with GS-15 or higher, the emulation effect will extend to State and local government. We are talking about a multi-billion dollar rip in the Government deficit and in increasing inflationary spiral.

So it is not just $77 million. It is much more than that, and its very predictable ripple effect, both in the civil service and throughout the economy.

Thank you, Mr. Chairman.

Chairman GLENN. Thank you, Mr. Nader.

Ms. Claybrook.

Ms. CLAYBROOK. I guess I am just here to answer questions with Mr. Nader, any questions you have.

Chairman GLENN. All right, fine.

Mr. NADER. And, Mr. Siegel, would you like to make a brief statement?

Chairman GLENN. Well, Mr. Siegel was not on our witness list. I believe you invited him along. And if you wish to refer to him, well, that will be fine.

We have an annual per capita income in the country. The last year for which we have data is 1986, I believe, of $11,670. In 1986, we had a median family income of $27,735.

You indicate that you feel that the average income across country, and I presume the median family income also, should be the basis, some basis for Federal salaries.

On that basis, what do you think Congressional pay should be?

Mr. NADER. I use that comparison, Mr. Chairman, just to describe the relational pattern that I think should occur and not a comparison with corporate law firms and other higher echelon corporate bonuses.

As a practical matter, the pay increase is what it is, the salary is what it is now. I mean nobody is going to reduce it. Congress is not going to do what it did in the early 1930's and reduce their salary and other Government salaries to set an example as they did in the depression.

So the issue is pretty moot. What we are talking about now is——

Chairman GLENN. Well, it may be, but what do you think it should be, what should be the level? I wasn't referring to what it is now.

Mr. NADER. I think that the level now is very adequate, very adequate.

Chairman GLENN. Well, that is a good triple of what the median family income is then, right?

Mr. NADER. Yes. But this is individual income we are talking about. If we took the Congressional family income, it would be higher.

Chairman GLENN. Would you comment about linkage? Do you think that we should link—it is grown by custom and by law that we link everything else in Government just about to Congressional pay.

Would you favor de-linkage?

Mr. NADER. I would favor linkage because I think Congress would chafe mercilessly under a pay system where it got less than someone in some department in Government, or Federal judges. And that would reflect itself in ways murky perhaps that are not good for the interest of the public.

I would always leave open, however, a system which could be passed to reward superior performance in the civil service.

Chairman GLENN. How do you get the people back into Government then? I know we can get somebody to fill the job. There isn't any question about that. You can put a want ad in the paper and get somebody that is willing to come in off the street and be Secretary of Agriculture, or fill a technical job out at NIH, or something. But it is not necessarily the type person we want in those jobs.

Now, if you are going to keep linkage, then how do you get the kind of people in we want to administer civil rights and banking and antitrust and consumer safety and air safety and labor laws and the drug war and nuclear cleanup and education and research? Are they going to come in at $27,000 a year?

Mr. NADER. Well, I did not think anybody is saying they are going to come in at——

Chairman GLENN. Well, let say we double that, we are going to triple that, but we are going to keep it at that. Are we going to get all the people, the good people we need, where there's competition out there between the civil service and the private sector? How do we do that?

I am very concerned about that. That concerns me far more than any Congressional pay raise, far more.

Mr. NADER. Let me respond to that, Senator. We are talking about, in this respect, about 2,000 positions, 2,200 positions, not counting members of Congress. We are talking about several other thousands of positions that would staff the critical work that you are describing, nuclear weapons plants, et cetera, on the one hand, and we are talking about a large country on the other.

We are not talking about an ever expanding supply of positions in the Federal service. We are talking about a finite supply which needs to attract quality people. And I submit that, by far, the greatest way to attract quality people is to have policies in place in Government that appeal to the idealism, to the rigor and to the performance of public service missions.

And let me give you an illustration. Let's say we need someone very good to staff NHTSA, to regulate the auto industry and save lives. And let's say they are out there, 100,000 competent engineers and scientists. All we need is a few dozen. And if NHTSA was something other than an agency that services General Motors and refuses to issue auto safety standards, and refuses to engage in adequate research and development for fuel efficiency and safety, those people out there are not going to want to come in and work for NHTSA. But if it was a vibrant, progressive, responsive, sensitive humane agency, you will get 10 competent people bidding for every single position at the very least. These are livable wages, Senator.

Chairman GLENN. What do you do with people in NIH who are offered triple out in the private sector. We need them for AIDS research. We need things like—I can go on clear across the Govern-

ment: air safety, drug war, nuclear cleanup, education, consumer safety, antitrust, the whole works here. We need the best. We need people who are talented. We need people who have the background, who have the research background, and who are the talented, the best people, not somebody we can just get by with.

This country was not built, Ralph, on just what we can get by with. It is built because we put good talented and capable people in Government, and that is quite apart from the Congressional pay raise to me. We have got a trillion dollar budget. And then you are saying we should go with somebody who has a one or two multiple of the median family income, and we are somehow going to get the best people in.

Well, let's say we are fortunate, we get the best people. We get a few of the best people. But I would submit that on average that is not going to be true, because all this pride in service, and all this pride in country and pride in being part of the scene and part of helping make a better America does not pay the bills when it comes time for the kids to go to college. And you are asking people to sacrifice their living standard and their family's future unless you are willing to pay them competitively to get the good people in Government. And I repeat again, I am not talking about Congressional pay.

Mr. NADER. I understand that.

Chairman GLENN. I am more concerned by far with civil service and the people out there we need to run this place.

Mr. NADER. I understand that. I understand that. I understand that when you pay these top civil servants $75, $80, $90,000, you are going to be able to get very good people.

You know, I was surprised to know what the salary of the seasoned engineer in General Motors is after 10 or 20 years. A competent seasoned engineer, they are making $50, $55, $60,000 a year.

Chairman GLENN. Okay. A lot of the Government people, though, are management people that have to manage that kind of $50,000 a year position. And that is what we are not able to get, are the good talented people at the top level.

Mr. NADER. Well, there are so many talented people, Mr. Chairman, who are in the 99 percent of the population who earn less than these top officials earn. I can give you a list of all kinds of quality, reliable people who would like to be judges. Many law professors make less than Federal judges, very competent Law Review editors, et cetera.

Chairman GLENN. Yes, but you are coming back to averages again. And I am talking about this country got built because some people were better at management, better at doing these things than other people.

Let me just ask one last question, and my time is up. Let me ask you.

Do you pay all of your employees over at your organization—do you pay them all the same?

Mr. NADER. No.

Chairman GLENN. Is anyone paid more than the national average?

Mr. NADER. Oh, no.

Chairman GLENN. Nobody? Everybody is under the median family income; everybody is under $27,000, right? Nobody on your staff over there is paid more than $11,670 as an individual?

Mr. NADER. You said median family income.

Chairman GLENN. How about per capita income?

Mr. NADER. The top salary——

Chairman GLENN. Its average in 1986 was $11,670. Does anybody over there make more than $11,670?

Mr. NADER. Nobody makes more than $25,000.

Chairman GLENN. Why do you have to pay somebody more than $11,670?

Mr. NADER. Well, I am not adhering to the viewpoint that these Government officials have to be paid $11,000. I am saying that the present salary levels, with inflation adjustments from year to year as the civil service should provide for, is a sufficient level. It is more than 98 percent of the American people earn.

Chairman GLENN. Well, I presume that you pay more than just the average per capita income because you have to get people to do the job that you require them to do, and so you have to go out competitively and bid for those people, and that is——

Mr. NADER. We don't——

Chairman GLENN. Well, you get people to come in and you pay them more than the national average in per capita income. Now, we are faced with that same thing at a higher level in civil service here, and I repeat for the fourth time I am not talking about Congressional pay.

I am concerned about how we do the job of this Government, and we are not going to be able to do it the way we are doing it now.

Mr. NADER. Senator, let me be personal. If you were President of the United States, I think——

Chairman GLENN. Well, I tried that once. That wasn't a very good experience. [Laughter.]

Mr. NADER. All right. If you were President of the United States, I would have no doubt that hundreds of competent people would go into NASA, go into the Nuclear Regulatory Commission, who now would never have thought of going into the Reagan administration and just putting their time in, not enforcing the law and not getting the job done.

It is the quality, the idealism, the commitment, the mission, the policies of the people at the top of Government who will attract many, many multiples more of competent, experienced people for those small number of jobs that are needed in the top echelons of Government.

Chairman GLENN. Okay.

Ms. CLAYBROOK. Let me just say one other thing, Senator, if I could, having worked for the Federal Government for 16 years on and off. Private industry is always going to be able to out-bid the salaries of the Civil Service.

Chairman GLENN. Sure, I understand.

Ms. CLAYBROOK. That is right. You are never going to be able to out-bid them through civil service.

Chairman GLENN. Let me add right there before you go ahead, though, the Quadrennial Commission didn't take all these big outside rich organizations. What they did—they had their recommen-

dations, and I am not back to saying again that the proposed pay raise is what we should do, but they based this whole thing on nonprofit organizations and the averages of State and local government salaries across this country, and none of the Fortune 500 or anything like that. So the big corporations weren't considered in their recommendations.

Ms. CLAYBROOK. I realize that.

Chairman GLENN. They are talking about school superintendents and people like that.

Ms. CLAYBROOK. They looked at the school superintendents, but they also looked at the major areas where you had the higher salaries of school superintendents, too. But, nevertheless, the fact is that civil servants are paid at the top level a very adequate salary even to live in this high-income area.

And many of them leave and go into private industry and they do make more, but lots of them don't and they stay for a long time because they are really dedicated. If you look at the people in 1981 who were pushed out of many of these fine Government agencies because they didn't philosophically agree with the new administration, we lost a whole raft of incredibly talented people who were working for a lot less.

They were working for $40 and $50,000 in 1981, which was the salary levels at that time. So I don't think that you can base this just on salary levels. I think that is the most important point that we could possibly make.

Chairman GLENN. Of course, you can't. I agree with that, but I would also submit that you can't just base it on altruistic matters and ignore salary either.

Ms. CLAYBROOK. When you are in the top 98 percent of the Nation, you are not altruistic.

Chairman GLENN. No, no, no. You are fouling up what I said now. You are not representing me correctly here. I said I am not talking about the Congressional salaries, per se. I am talking about the other Government Civil Service people that have to address all these very major problems. We are in the top 1 percent; that is right.

Ms. CLAYBROOK. Okay. The highest level, the executive level, the SES level 18——

Chairman GLENN. Well, okay. At that highest level, you are talking about a very few people, but that is not the average for those 2,500 to 3,000 people that we try and attract into Government to do these very technical jobs, and we are not competitive now in getting them in.

Mr. NADER. But, Mr. Chairman, do you think if the salaries in the Defense Department were double in 1981 what they were that the Defense Department would have less fraud, waste and abuse?

Chairman GLENN. Of course not, but I think——

Mr. NADER. I mean, look at Ernie Fitzgerald.

Chairman GLENN [continuing]. If we had higher salaries, we would have a better shot at getting the higher-talented management people in and some of these tragedies of mismanagement would not occur.

I don't like the fact that we are tied to all these things. I think we have to de-link one of these days, whether we like it or not, and

then get on with making the Government efficient by getting good people in and paying a decent salary.

If people are willing to come in for a year or two, that is fine. They sacrifice, they get by for $25,000 a year, and who cares? They are back to industry and that is that. But that is not the type of thing we are looking for.

We are looking for the good, solid, career public servant who should be able to send his kids to college and who should be able to have a decent standard of living compared to everybody else, if he wants to come into Government. He is not going to get by just on being altruistic and waving the flag, and we shouldn't expect him to do that.

Ms. CLAYBROOK. But the lowest level today of the executive level appointments, which are not all of the 2,500, but the majority of these agency heads, is $75,000, and it goes up for the top level to $115,000. So they are not at a low, low level of salary even today.

Mr. NADER. And if they can't send their children to college, Mr. Chairman, what about the rest of America which is trying to do it on $20 and $30 and $40 and $50,000? I mean, there are now grants and loans and scholarships and all kinds of ways to have youngsters go to college.

I mean, this is what I see around the country, this concept that at $70, $80, $90,000 a year they can't send their kids to college. And people out there around the country are just viewing this kind of assertion with utter disbelief.

Chairman GLENN. My time is roughly double over, so go ahead.

Senator STEVENS. I can remember at times when you and I really got into a heated discussion. I hope we can keep it calm, but why do you compare our top one-quarter of 1 percent of 5.4 million Federal employees with the average of the workforce as a whole out of 235 million people? Isn't the Federal Government entitled to have top-paid people?

Mr. NADER. Let me answer this way. They are now at five times the average.

Senator STEVENS. They are not five times the average of the top one-quarter of 1 percent of the private sector or one-quarter of 1 percent of the non-profit corporation sector or one-quarter of 1 percent of the government workforce out there that works for local government, school districts, et cetera. If you want to be fair now——

Mr. NADER. There is a difference in philosophy, Senator.

Senator STEVENS. But you are not fair, really, are you?

Mr. NADER. No.

Senator STEVENS. You are not fair.

Mr. NADER. Wait, wait. [Laughter.]

I mean, first let me reply and then you can characterize it, but a priori it is a little hard to take. I said that the most important thing in terms of the public respect and the public support of their representatives is their feeling of their relationship with what these officials are getting. That is why I am comparing it with a multiple of the average wage.

Senator STEVENS. You are not being fair.

Mr. NADER. Five times——

Senator STEVENS. Take Congress out of this, all right? Let us take Congress out of this conversation. Will you do that for me? Just leave Congress aside; let us talk about the 2,200 people who are the top civil servants and military people in this Government.

Now, you are comparing them to the workforce as a whole. We compare them to the top portion of the non-profit and local public servants throughout the country. Now, are you being fair to tell us that we must pay our people, these 2,200 people, based upon the average family income?

Why can't we compare them logically to the one-quarter of 1 percent in their respective categories in other parts of our economic society?

Mr. NADER. Well, you can even do that. The Governor of California makes $85,000 a year. The Cutler commission picked a few peaks in each category and said let us compare them with these people. How about comparing them with the Governor of California?

Senator STEVENS. The Governor of California also has a bunch of allowances and, you know, cars and mansions a few other things. How about the chief of police of Los Angeles, $145,000? How about the——

Mr. NADER. He is doing a great job, isn't he?

Senator STEVENS. He is doing a great job. [Laughter.]

That is right. He has got a hell of a problem out there and I think he is doing a pretty good job, as a matter of fact.

But you want us to compare with a cop on the street in Los Angeles as far as the head of NIH. Now, you are not fair with our people who are working for the Federal Government to come in here and tell us this is an egalitarian society and you must bring people in and run NIH, run the research branches of our Federal Government, nuclear medicine and everything else, on an average salary.

Ms. CLAYBROOK. Wait a minute. Senator, from the Governing Magazine, December 1988, I would like to submit for the record, it says "Pay At the Top Level All Over the Map," and he has governors, attorney generals, health directors, lottery directors, for reasons I don't know, corrections directors, and supreme court justices in the States, and there is virtually no one here that is over $100,000 [1].

Senator STEVENS. Well, I will tell you what; you put it in and I will put in the ones that are, all right, because you are saying there is virtually no one and I am saying we ought to have an ability to attract to the top levels of the Federal Government the best and the brightest from our whole society.

And what I say you are doing is you are creating a situation that there is no reason to come in here except to work for Ralph Nader and make $25,000 a year. Who sets your salary, Ralph?

Mr. NADER. Now, wait a minute.

Senator STEVENS. Who sets your salary? You are asking me how to set mine.

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[1] Information was not received by press time.

Mr. NADER. Just a minute. You are mixing up—now, I am beginning to understand what you are saying. You are not talking about the political appointees who are getting this salary increase if both Houses do not turn it down. Are you talking——

Senator STEVENS. You are talking about 13, 14 people that are——

Mr. NADER. Wait a minute. Are you talking about the 2,200 officials in the judiciary and Executive Branch who are subject to the Quadrennial Commission's——

Senator STEVENS. That is right.

Mr. NADER. Right, all right. You know and I know, Senator, those are political appointments. They don't get those jobs on the basis of merit. They get those jobs on whether James Watt has the ideology of Ronald Reagan or Caspar Weinberger is known to Ronald Reagan.

The same is true for assistant secretaries. They get appointed by the secretaries based on affiliations, dealing with ideology and friendship and loyalty and the rest of it. You could pay them 10 times as much and you wouldn't get a different caliber of person. You wouldn't get someone other than Weinberger, someone other than Meese, someone other than Watt. I thought you were talking about other officials.

Senator STEVENS. You see, that shows the difference between you and me because I liked Jim Watt and I liked Cap Weinberger and I liked Ronald Reagan. And, you know, I understand you and you understand me.

Mr. NADER. And they would have worked for even less salary.

Senator STEVENS. They would have.

Mr. NADER. Yes.

Senator STEVENS. Yes, they would have.

Mr. NADER. So, what is your problem? [Laughter.]

Senator STEVENS. My problem is what do you do with the existing system. You are opposing the pay increase which, in effect, sets the pay increase for the civil service.

Mr. NADER. All right. Now, let us talk about——

Senator STEVENS. And I can show you that the civil service, because of people like you, has been kept down, and today it has not adjusted.

Mr. NADER. There is no one——

Senator STEVENS. Let me ask you one question.

Mr. NADER. There is no one who has supported——

Senator STEVENS. You talk about the Founding Fathers.

Mr. NADER. Yes.

Senator STEVENS. You talked for 25 minutes and I let you—you listen to me for a minute. [Laughter.]

Mr. NADER. Well, I am trying to find out whether it is a question or an assertion.

Senator STEVENS. You want us to listen to the Founding Fathers, okay?

Mr. NADER. Yes.

Senator STEVENS. What was the salary that the first Congress set for George Washington?

Mr. NADER. I don't know. You tell me.

Senator STEVENS. It was $25,000 at a time——

Mr. NADER. Well, he founded his country. He deserved it. [Laughter.]

Senator STEVENS. I see, all right.

Mr. NADER. I would have even paid him more, Senator.

Senator STEVENS. But you wouldn't pay a President of the United States on the basis of the same comparable salary today, would you? Do you know what it would be? Do you have any idea what it would be if we paid him on the same basis today?

Mr. NADER. What would it be?

Senator STEVENS. Well, it would be about $2 million.

Mr. NADER. Would we get a better President?

Senator STEVENS. No. [Laughter.]

We are trying to put it all comparable.

Mr. NADER. Comparable to who, the head of Exxon, some corporate lawyer pulling down $800,000 engaging in mergers?

Senator STEVENS. You go out and get tax-free money, don't you? Do you know how much money we would put back in the Treasury every year if we didn't allow you to use tax-free money?

Mr. NADER. Do you know how many injuries and deaths——

Senator STEVENS. No. Answer me the question. Do you know what it is?

Mr. NADER. Do you know how many disability payments you don't have to make from the Federal Government because of the people whose lives have been saved because of auto safety standards? Don't get into that one, Senator. [Laughter.]

Senator STEVENS. Don't get into that one. I am not sure that other people would not have thought of the same thing, Ralph, without tax-free money.

Mr. NADER. But you supported that.

Senator STEVENS. You have got the tax-free economy out there. We compared these salaries to the tax-free economy. $12.5 billion is what tax-free corporations take out of the Treasury in what would have been paid in if they weren't tax-free. Why don't we change that, Ralph?

Mr. NADER. Go ahead.

Senator STEVENS. I think we should, I think we should. In the first place, I don't know how you get anybody in this day and age to live in Washington and pay them $25,000.

Mr. NADER. Who is saying——

Senator STEVENS. Isn't that what you said you paid your highest person, $25,000?

Mr. NADER. Yes, yes. They are very dedicated.

Ms. CLAYBROOK. For the record, Senator, I wanted to say that the organization that Ralph founded, Public Citizen, does not adhere to that. I just want to make that clear.

Mr. NADER. It is a separate organization.

Ms. CLAYBROOK. A separate organization.

Senator STEVENS. Joan, I know what you have done——

Ms. CLAYBROOK. I don't want to mislead anyone.

Senator STEVENS [continuing]. And you earned every penny you have made in the Federal Government. I have great respect for you, even though I disagree with you on this, and I am surprised to see you sitting there, as a matter of fact. [Laughter.]

Ms. CLAYBROOK. Well, I would like to submit for the record, Senator, also, from Governing Magazine in 1988 the salaries from cities—professionals, mayor, city administrator, public works administrator, superintendent of schools, chief of police, and city council member.[1] And, once again, virtually none of them make over $100,000, and the vast majority of them make under the Congressional salary and a large number of them make——

Senator STEVENS. That is not fair again. You are not fair, you are not fair.

Ms. CLAYBROOK [continuing]. Make under the $75,000——

Senator STEVENS. You are again not fair.

Ms. CLAYBROOK. No; make under the $75,000.

Senator STEVENS. That takes every single berg and everything in the country and says average amount. Every member of the House represents over 500,000 people.

Ms. CLAYBROOK. But those people are available to come and work in Washington.

Senator STEVENS. Take the superintendents of schools that come from cities of 500,000 or more and see what you get.

Ms. CLAYBROOK. Okay. Philadelphia, $70,000 is the mayor, and the superintendent of schools is $100,000.

Senator STEVENS. And that is more than a member of the House, isn't it?

Ms. CLAYBROOK. Right.

Senator STEVENS. Do you want those superintendents to ever come into Washington?

Ms. CLAYBROOK. Washington, D.C., is——

Senator STEVENS. Joan, do you want them to ever come into Washington?

Ms. CLAYBROOK. Sure. Superintendent of Schools of Washington, D.C., $71,000.

Senator STEVENS. How many are going to come in and try to buy a house here if they are going to lose a quarter of their pay?

Ms. CLAYBROOK. Boston, Massachusetts, $64,000; New Orleans, $95,000. I mean, there are plenty of jobs in America that pay less than the maximum—the maximum salary for the top-level civil servant is $75,000 a year right now, and that is limited because of the limit under the Congressional salaries.

Chairman GLENN. Okay. Senator Lieberman.

Senator LIEBERMAN. Thank you, Mr. Chairman.

Ralph, I am sure that in what you have said today you are expressing the sentiments of the vast majority of American people. There is no question about that, and the central fact that you have cited is that 99 percent of the American people make less than the members of Congress are making now. It is hard to convince them that the Members of Congress need a pay increase. So I understand your feeling that members of Congress are getting more than enough now.

If you were starting over again, how you would set what you think is a reasonable salary?

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[1] Information not received by press time.

I know there was some colloquy here about average income. Does a reasonable salary relate to average income in this area? Does it relate to the cost of living here? What is the fair standard that you would establish?

Senator STEVENS. Senator, may I be rude and interrupt you?

Senator LIEBERMAN. Not at all.

Senator STEVENS. I have got to go to another committee meeting.

Senator LIEBERMAN. Go right ahead.

Senator STEVENS. And I don't mean to ask another question. I would like, Mr. Chairman, to put in the record an excerpt from page 25 of the Appropriations Committee report of the 99th Congress, First Session, that deals with the continuing appropriations.

This shows the final action that was recommended, and it was through that Committee—I am a member of that Committee, too; I took it from this Committee to that Committee. And in that report is the recommendation, in print, page 25—it is report 99-210—that recommends the changes requested by the Quadrennial Pay Commission in the Pay and Salary Act of 1967.[1]

Chairman GLENN. Without objection, so ordered.

Senator STEVENS. That was duly filed, published, on the desk of every member of the Senate.

Thank you, Mr. Chairman.

Chairman GLENN. Go ahead.

Senator LIEBERMAN. Just to restate the question, if you were starting again, what would be your standards for determining a reasonable level of compensation for members of the Congress, if not Members of the Civil Service?

Mr. NADER. Well, the standard is a general one of what is a decent standard of living, given what the country can afford, and $89,500, plus very comprehensive health insurance, a great pension plan, life insurance, a $3,000 housing deduction every year, and a lot of other income-supplanting perks, certainly represents to the vast majority of the people in this country a decent standard of living.

Senator LIEBERMAN. I agree. I take it from what you are saying that you would consider the cost of living in the Washington area?

Mr. NADER. Yes. That takes into account—we are talking about a decent standard of living in the Washington area, with the added obligation that they have of having another apartment. They don't have to have two houses.

Senator LIEBERMAN. Right. I find, incidentally, though, when I am home and talking about this issue that a lot of people, in Connecticut anyway, think that we get a housing allowance.

Mr. NADER. No. You get a housing deduction.

Senator LIEBERMAN. Understood.

Mr. NADER. Yes, yes.

Senator LIEBERMAN. But a lot of the people think that there may be a housing allowance here.

Let me go to something else. I gather that more than half of the Members of the United States Senate are millionaires. I am not

[1] See p. 259.

one of them, but I gather that is the fact and I gather that the number is going up.

Two questions about that. One, does it concern you, because there clearly is a relational problem there, to use your term? Secondly, do you think that the level of compensation is a cause of the increasing number of millionaires or does it have to do with something else?

Mr. NADER. I don't think the level of compensation has anything to do with the level of millionaires. The reason why there are so many millionaires in the Senate is primarily the campaign finance demands, and that Members, some of whom vote pretty well on some issues, but they finance themselves into office—Senator Rockefeller spent millions of dollars. The new Senator, Kohl, from Wisconsin, I understand, spent several million dollars. I think if we deal with the campaign finance problem, you will have fewer millionaires being elected to the Senate.

On the other hand, if you go around the country and take your favorite people, people who have been fighting the good fight, skilled citizens, skilled scientists, and so on, and say, would you like to run for Congress, very few of them would say no, the pay is too low.

I think the millionaire problem is a campaign finance one, and also a matter of leisure. When you are a multi-millionaire, you can campaign day after day. You don't have to hold down another job.

Senator LIEBERMAN. You may be right. Let me ask about the Madison amendment, which I gather you talked about earlier.

Mr. NADER. Yes.

Senator LIEBERMAN. I was out for a moment. If I understand correctly, that amendment would say that salary increases could not go into effect until the next Congress. How would that affect members of the Senate?

Mr. NADER. It would affect—oh, I see. The way it is written, it is actually just the next election, period.

Senator LIEBERMAN. Right.

Mr. NADER. Yes, not—you know, because of the staggered terms, it is a difficult problem to deal with.

Senator LIEBERMAN. There has been some talk about this idea among members of the Senate. One of the concerns was that only one-third of us change every couple of years, so there is not an easy way to put this into effect.

But I gather that what Madison had in mind, and maybe what you have in mind, is that at least there would be one election in which one-third of the members of the Senate and all the members of the House would have to go back and face the public, and in that sense they would not all be raising their salaries without facing reelection.

Mr. NADER. That is right. It was kind of an informal referendum judgment that was implicit in the Madison amendment's philosophy.

Senator LIEBERMAN. I think a lot of local governments and a lot of State governments follow that basic principle as a way of trying to avoid the political awkwardness and the inherent conflict of interest of people raising their own pay, and it is not a bad idea. And maybe in this, as in other things, we should go back to Madison.

Mr. NADER. And, of course, that can be done statutorily. I mean, it is going to be hard to get ratified.

Senator LIEBERMAN. Right.

Mr. NADER. I might add that there was a move in the senate of California to ratify it and the leader of that move said that he failed because members of the California delegation told the State senators in Sacramento in no uncertain terms that they were displeased with their interest in ratifying the Madison amendment.

Chairman GLENN. Senator Roth.

Senator ROTH. Thank you, Mr. Chairman.

Mr. Nader, you have said several times, of course, that you support the concept that Congress should vote on their own compensation, and I can understand that, although I think it is rather a complex proposition.

I think the fact is that for many it is very difficult to vote on your own pay, whether it is large or small. I think we heard the four Senators who testified earlier today against an increase.

All admit that they have never supported an increase, so that while you have the theory and the constitutional requirement that it be set up by law, there are those who believe that Congress, for whatever reason, will not have the courage to vote.

Howard Baker, for example, in testimony before the Quadrennial Commission, said, "I am not at all certain but that the Congress of the United States is institutionally incapable of setting its own salary."

Maybe the increase is too much; I am not arguing the amount of the increase right now. But I really think it is important that we try to deal with some kind of a proposal that will be fair and equitable, because isn't the most important goal of compensation, whether it is the Senate or the Congress or the judiciary, to attract and retain—maybe not so much retain with the Congress because I think that is a different matter, but in the judiciary and executive, Branch, qualified individuals of all backgrounds from all walks of life?

Shouldn't that be the goal of our compensation policy, and can we really accomplish that with the Congress voting for their own increases?

Mr. NADER. Well, I think the problem of former Senator Baker is substantially reduced by the Madison amendment, whereas Congress votes and then says, well, it doesn't go into effect after the next election and, in effect, throwing it open to the closest thing we have to a national referendum.

Senator ROTH. Does that really work, though, for the Senate where you have only a third? You are still voting on your own increase in 2 years, so you have a little different situation in the Senate than you do in the House.

Mr. NADER. Mr. Siegel would just like to amplify my response.

Mr. SIEGEL. Senator, Mr. Chairman, I was saying to Ralph that you could delay the increase for the other two-thirds of the Senate until they came up for reelection, so the people would feel that they had participation in the process of determining who was going to serve them in their district.

And if I might add my reason for being here today, Mr. Chairman, if it is permissible, to give you a frame of reference for that,

Senator Humphrey talked about the founding of this Nation, and it has been talked about a lot here this morning.

This campaign that I represent that has now become the tea bag revolution began with one phone call to one radio talk show in Detroit, Michigan. Senator Levin on this Committee is aware of that very directly.

Senator ROTH. Mr. Chairman, I have limited time.

Mr. SIEGEL. I am sorry.

Senator ROTH. And you are not here as a witness, and I think we should follow the Chairman's requirements and I would like to return to my line of questioning.

The problem with the 6-year is, of course, that it does mean for some individuals who have been just reelected that there is an extended period where they don't get cost of living increases.

Let me go to a series of quotes, because these discussions have become very bombastic and the rhetoric has become very loud. I think it is important to understand that there are a number of people on different sides of the question and all are pretty much acting in good faith.

And I regret that sometimes it would appear that we are claiming that those who don't agree with us are not, but Lane Kirkland, for example, in supporting the pay increase said that working Americans recognize fully that the salaries required to attract the top people to the Federal bench, Executive Branch and Congress are several times what they might expect to earn, but they recognize something else. Government on the cheap only benefits people who don't depend on Government for equity and fairness.

Would you disagree with that statement?

Mr. NADER. I would disagree with its implication that you get higher-quality people from a broader, diverse background in the United States if you pay higher salaries than they are now being paid.

Senator ROTH. Would you agree that you limit, perhaps, the choice or selection of Government employees to the extent your pay is less than in other non-profit sectors?

Mr. NADER. I think you limit the choice of people who are making more now than what their counterparts are making in Government. Another way of putting it is people who are earning more money in the private sector than the jobs that they would contemplate in the public sector will be more likely to go into the public sector if the salaries go up. So you recruit more from the top 1 percent, but you would not recruit more from the 99 percent.

Senator ROTH. One of our witnesses yesterday talked about the middle-age individual in his, say, 40s or 50s who probably is at the height of his financial requirements, has children eligible for college, and so forth. And I agree with you; I think college tuition has become a terrible problem and burden, and increasingly so, for all Americans.

But aren't you ruling out that kind of individual who can make more money in the private sector from considering public service?

Mr. NADER. Well, if they do that, Senator, maybe they shouldn't go into public service. I mean, public service pays a decent standard of living. I don't think anybody can challenge that because a decent standard of living is not just an objective criteria of having

enough food and shelter and money to pay for services. It is also a relational standard with what the rest of the country is making.

I think when the gap between the political rulers and the ruled gets too wide, you get a lot of public cynicism out there, which, of course, is reflecting itself in all the calls that are made to your offices from Americans everywhere, and the telegrams and the tea bags and the letter.

Senator ROTH. Let me say on that point, to be candid, and I have rarely voted for an increase, but the fact is I have served in this Congress many years and I know of no increase where we have got any significant mail in support of a salary increase, whether it is large or small, so that I think you have that problem.

But let me go on and read what Rev. Benjamin L. Hooks, Executive Director of the National Association for the Advancement of Colored People, wrote in support. He said the poor, the disadvantaged and minorities do not have the resources that are available to wealthy Americans. The wealthy have individual power or the resources to hire the best lawyers or lobbyists. The least-favored must turn to Government where they are victimized in the work place or elsewhere. They will only get the service they need if we are able to attract the best possible men and women to the Federal Government, and to do that we need to increase salaries for our top-level officials.

Now, the reason I read that quotation from Benjamin Hooks is I think it is important to understand that good people do disagree on this issue; that it is not a black and white, and that there is—I am like you; I have not publicly said what I am going to do yet, but I am particularly concerned with the other branches of Government.

Maybe we have asked for our own problem and should deal with it, but if we want competent Government, isn't it important that our compensation, within reason, be high enough to attract the best?

Mr. NADER. Yes, and I think the levels now can attract the best because there are a lot more people out there in that pool of talent than the number of jobs that are needed to fill with competent people.

I know Ben Hooks, and he took that job as head of the Federal Communications Commission years ago when the salary was much lower. And I would venture to say that I think he thinks that there were more competent people in the higher echelons of Government under the Johnson and Kennedy administration than there has been under the Reagan administration which is getting higher pay.

You know, what troubles me, Senator, is this. I got a letter—and I am sure you got even more letters—I got a letter from a woman in Alabama who said—and look at the way she put it—she said, they in Washington say they can't live on $90,000 a year. I have to work at the minimum wage and make it on $6,700 a year.

You see, that is the kind of problem that complicates the issue, you see.

Senator ROTH. I understand.

Mr. NADER. And you can't say, Senator, that that is irrelevant. It is that relational feeling. Congress as a whole, and Mr. Reagan, have frozen the minimum wage.

Senator ROTH. But you would not suggest, Mr. Nader, I think, in answer to the Chairman's question earlier, that pay for your highest civil servants and judiciary should be based on the compensation of those in the lower part of the economy?

Mr. NADER. It should not be based on a double standard.

Senator ROTH. But, again, isn't it important that Government be efficient and effective?

Mr. NADER. And respected, above all.

Senator ROTH. Well, I think all three.

Mr. NADER. But it is hard for the 7 million people who are working at the minimum wage, frozen for 8 years while Congress raised its salary 48 percent in the same period, to have respect.

Senator ROTH. Let me ask you a question. Have you ever testified in favor of an increase for Members of Congress?

Mr. NADER. No, because the existing proposals were way ahead of my levels of proper compensation for high Government officials. I mean, we have never had proposals to reduce where I can come and say, no, it shouldn't be reduced.

Senator ROTH. Let me go back to some of the testimony yesterday, particularly in the area of science, and so forth, where not only are we having trouble recruiting, but the fact is that we are using consultants.

Has your organization looked into the problem of consultants around the——

Mr. NADER. Yes. Years ago, especially when Senator Pryor was making his investigation on the Beltway, as he called it, bandits, the Agency for International Development was losing a lot of people because they would go down to the Beltway, join these consultant firms and triple and quadruple their salaries.

I think that is the problem of Government contracting. I think a lot of the concern that is being reflected today by the Senators up there is an adaptation to the problems instead of trying to face the problems.

You can't simply adapt to these problems of these consultants. You have got to deal with them the way Senator Pryor wanted to deal with them. What is appropriate to subcontract? How much of our Government are we going to subcontract simply because we have got this enormous attraction to triple and quadruple salaries, taking away some members of the AID or the economists at the AID?

Ms. CLAYBROOK. Well, not only that, Senator. Let me just add to that, and that is that in 1981 when the Reagan administration came in, they very purposefully started subcontracting a lot of Government jobs out to reduce the number of Federal employees.

So the libraries, for example, in Government agencies now are not managed by librarians who work for the Government. They are managed by contractors and they cost a lot more. They are throwing away volumes of books and they have less accessibility.

So the Government spends huge amounts of money. It must be hundreds of billions of dollars every year in contracts. The Government can control that issue by reducing the amounts allowed for payment under contracts. And if the Government took that in hand, then there wouldn't be this disparity.

Part of the problem is that the Government allows these very high amounts of compensation for contractors and wastes a lot of money, in our view, on work that would be much more efficiently carried out by civil servants.

Chairman GLENN. Which you can't hire to do.

Ms. CLAYBROOK. You can if you are not willing to contract and pay for it all out of the Federal Treasury.

Chairman GLENN. No.

Ms. CLAYBROOK. It is coming out of the Federal Treasury.

Chairman GLENN. No. When Senator Roth finishes, I will give some figures on that.

Ms. CLAYBROOK. Yes, okay.

Senator ROTH. Just let me say that I agree that there are some cases where it could be avoided by better contracting. I would not disagree with that.

On the other hand, I think it is a fact that you have people of certain skills and competency that you are not going to get. And if you couldn't get them through consulting agreements, they would go into other endeavors.

Ms. CLAYBROOK. Well, Senator, just let me say when I took over the head of the National Highway Traffic Safety Administration, there was a consultant who was paid by my predecessor at the rate of $175 an hour, and he was paid that because no one was paying any attention, and he was paid that for like 6 months. And that is not the only example.

Senator ROTH. Ma'am, I have already said that I agree that there are many such instances, and I am very concerned, as Dave Pryor has been, with the use of consultants. But I don't think that that is a total answer.

I will yield back to the Chairman because I think he has some comments he wants to make.

Chairman GLENN. Well, just a little bit, and it is sort of along that same line. Mr. Siegel, I want to get back to you in just a minute here and let you have a couple of minutes here to tell how your group got started. But I can address one of these questions to you, too, and I wanted to follow up on what Senator Roth was saying.

The Office of Personnel Management has told us that there are presently some 35,000 Federal jobs that they cannot fill, and they are mainly in the science, the research, the technology areas that they can't fill.

And so what they are doing is they are permitting agencies to contract out scientific research, engineering, and other work at much higher salaries, plus the institutional overhead charges.

Now, I don't know whether the people out on the tea bag circuit understand all that or not, and what is happening here. And I repeat once again so that nobody can misunderstand, this is quite apart from the Congressional pay raise, to me.

Unfortunately, we are faced with linkage. It has grown up by custom and by law, but about 90 percent of it strictly by linkage that everything else is held to some subordinate figure under the Congressional pay level.

Now, you know, let me give another example here. NIH, they testified. Dr. Fauci out there says they have not been able to re-

cruit one senior biomedical research scientist in 10 years, and during that same period NIH has suffered a net loss of 28 percent of its most senior research scientists.

These individuals have left to accept academic sector jobs with salary increases, or with a company, that range, it is his testimony, from 50 to 300 percent. Now, these are the top medical people. So what they do——

Mr. NADER. Can we reply to that?

Chairman GLENN. Well, just a moment. Let me finish.

Mr. NADER. Okay.

Chairman GLENN. According to his testimony, NIH can sometimes attain the services of top scientists indirectly by making these contracts that Bill is talking about because they can't keep people in. So they set up contracts with institutions and employ them at much higher salaries that are then charged to the Government, plus the employing institution's overhead charges.

Now, we have another one within NASA. They want somebody to run their micro-gravity program, a very important program for them and for general scientific research. They have not been able to find anyone, so they are using the President's exchange program with the private sector to obtain a director on a temporary 12-month basis. And he, of course, is being paid at twice the salary that the Government could have paid him if he had come in full-time.

Now, I have heard some of the talk shows on this subject, too, just driving back and forth from work. And they are inflammatory and it is all Congressional pay talk and we are bad guys and that is it, and I understand that. And everybody gets all excited and, boy, the lights light up and you can't take all the calls, and I understand that.

But has anybody ever tried to explain this linkage that we are faced with here and the fact that when you fly back to the State of Washington, you are going to be flying on an airliner that is inspected under the rules set by a Government employee, somebody who may not be a leader in the industry or someone with much experience because we couldn't compete for pay?

And we want to deal with Alzheimer's disease. AIDS is still expanding. We can't get the people out there to work on AIDS research. We have drug problems in our communities. We can't get the best people.

I am not talking about somebody just to fill the job. I am talking about getting people that deal every day with public health and safety. We can get people in, as Mr. Nader says. I am sure we can, and we can get people out of med schools, but are we getting the best to deal with some of these national problems?

I wish we lived in the perfect world that he likes to talk about where people are altruistic enough to come in and serve their fellow men and women and do these things without worrying that much about the money, but the fact of life in a free society is that money is a problem to people. People want a better standard of living if they are better than anybody else at what they do in managing or research or whatever, and that is just a fact of life we live with.

Senator ROTH. Mr. Chairman?

Chairman GLENN. And so do people understand this linkage when you have your call-ins going?

Go ahead, Bill.

Senator ROTH. Could I just make one further comment in line with what you are saying?

Chairman GLENN. Sure.

Senator ROTH. There was a recent publication put out by OPM, "Civil Service 2000," which highlights some of the, I think, serious personnel challenges faced by the Federal Government.

The report states that as our work becomes increasingly complex and technically demanding, and as demographic changes make the national labor force market more and more competitive, nowhere will the recruitment and retention problems be more serious than at the highest level of the Federal Government workforce.

Chairman GLENN. Yes.

Senator ROTH. I think that is a fair statement. I think that as we are moving into this information age and high technology, the need for better trained and more skilled people is going to increase.

Chairman GLENN. It sure is.

Senator ROTH. And it is a problem we are going to have to deal with.

Chairman GLENN. Well, you can carry it over into other areas, too, and I repeat again, we have to de-link. I believe that. Quite apart—I don't care, Congressional pay raise, no Congressional pay raise. They can up it, lower it, whatever. We have to de-link somehow so that we get some of the best people in.

Would we be in the banking mess we are in now had we had more competent people overseeing? I don't know. That is another subject. We may have some different views on that. Maybe that was oversight, sins of omission, commission, I don't know.

Would we have had a lot of the Wall Street scandals had we had better, more competent investigative, tough people that we are willing to pay to come into Government and oversee that situation?

You can go on and on, obviously—the nuclear clean-up, education, a whole bunch of other areas. But do your people out there that you talk to every day on the radio, and your colleagues who do the same all over—have they talked about this idea of linkage, and do they understand, or is it just berate Congress and we are the bad guys and that is it?

You can berate Congress and we can keep the pay scales down, but I am very, very concerned about what is going on with Government and our research people. We are being out-competed by Japan—being out-competed by Germany, and France to some extent.

We are now beginning to be second-rate in certain selected areas of research in this world. Research built this country of ours, and we can't continue to lag behind. Private industry, contrary to what President Reagan said, does not do all the research.

He says if it is worth doing, private industry will do it. That is the biggest bunch of nonsense I ever heard. That has not been the history of this country. We have a few people like DuPont and 3M and Bell Labs and Monsanto and a few companies like that that do the 5, the 10, the 15-year research. But by and large, the research that moved this country ahead was done at Government sponsor-

ship, at Government laboratories, or by grants to Government-supported university or college projects.

Now, we are not having that. We are being out-competed. I want the best people in doing this thing. We can't be second-rate anymore. Do your people understand this linkage?

Mr. SIEGEL. Senator, if you have the time this afternoon, I would be delighted to put you on the air. I think you would make an excellent guest.

Chairman GLENN. I am all tied up. Thank you.

Mr. SIEGEL. Mr. Chairman, the comments that I have are based on perceptions of what the public feels across this country. Through this campaign, I have had the opportunity to——

Chairman GLENN. Well, now, are you leading the perceptions or are you responding to the perceptions?

Mr. SIEGEL. I am responding to perceptions. I am here today strictly to present to this Committee the feelings of people as I have heard those feelings expressed on talk programs throughout this country in San Diego, in Cleveland, in Detroit, in Palm Beach, Dallas, New York City, and elsewhere across the country.

So my views may be distinct and separate from what I am about to say, and my perception is this, that the movement that has developed as a result of the phone call I mentioned earlier from Tony Mazerano to a radio program in Detroit hosted by Roy Fox is based on the Congressional pay raise, primarily.

That is the emotional response, and Mr. Nader has eloquently talked about the relational aspect of all of this. The people look at all of you as part of them. Political leaders are an extension of the constituency they represent.

People like to be proud of their leaders, and I convey to you, Mr. Chairman, that the American people, as angry as they are, want to look at this Committee and this Senate and this House of Representatives as people who are, in fact, extensions of them that they can be proud of, but they are very dismayed about this process which has been talked about previously.

Specifically with respect to your question, I think the American people are intelligent—you all know that—and will respond to proper, rational arguments and reasoned arguments about the need for salaries that may be different in one segment of Government as opposed to another.

The emotional response from the people, based on many facts that they have presented to us across the country on the air, is a response that is directed specifically, in my view, toward the Congress, and that other matters, if presented to them in a reasonable way, I think, the people will understand that.

Chairman GLENN. Yes, but I haven't heard in any of these programs that I have heard—and I have just heard a couple, but I haven't heard any discussion of anything except just berating Congress for a pay grab, and they don't understand some of these linkages that we are trying to deal with that I think are just desperately important.

I think we have to de-link, and I don't know how we do it, but we are going to have to do it.

Mr. SIEGEL. Well, the other part of that, of course, Mr. Chairman, is that people—and I have heard this repeatedly over and

over again, and this is across the country, that the process is of deep concern.

The fact that you don't vote on these matters—there ought to be a vote on every salary increase perhaps without linkage. But, secondly, in your case, of course, the intervening election is a crucial element of all of this, so that people feel that they have something to say about their elected officials.

Even with regard to the other matters, the fact that there is no vote and the fact that all of the 2,700 people will go into this pay raise situation without the Congress of the United States having directly increased those salaries denies the people of this country the very representative body that has been in existence for 2 centuries to represent those people, when all other branches of Government may not have been as directly responsive at the grass-roots level.

That is what is being lost here and, unfortunately, Mr. Chairman, I have to tell you that the talk programs in many ways for the American people have replaced this institution because of the dismay that they feel about this institution and its distance from them.

Chairman GLENN. Well, I don't disagree with you on the vote. I am happy to ante up and do what I have to do on the vote. If I vote against the 51 percent raise and the honoraria that I think is scurrilous, that will be a vote.

Last time around, because I was Chairman of this Committee, I wound up floor-managing the bill out on the floor, and I believed in that level of raise that we had before. I thought that was good. It kept pace with things a little bit. It didn't make up all the differences, but it was a much more modest raise, far more modest.

I floor-managed it, I believed in it, and I had an awful lot of Senators come up and say, you are right, John, you are absolutely right, but I can't vote with you for political reasons. Well, okay, that is a great profile in political courage, I must say.

And after all of that and these expressions of support that I had back at that time, we voted and I voted for what I believed in, honest to God, was a good thing I was doing, and I got six votes on the Senate floor. It probably won't get that this time, but——

Ms. CLAYBROOK. Senator, I would like to address the linkage issue because that is something that you have really laid down here that is extremely——

Chairman GLENN. Well, I am laying that down because I see it as a really serious problem for this country. I see it in international competition, I see it in our medical problem here, and it is bad and we have got to get rid of linkage.

Ms. CLAYBROOK. Okay, one point.

Chairman GLENN. And I know you don't stand for that. You want to keep them linked, but I don't see——

Ms. CLAYBROOK. Well, no. I think——

Chairman GLENN. Then we are going to waste a lot more money going outside and hiring other people by contract.

Ms. CLAYBROOK. I think, Senator, that a very instrumental set of hearings ought to be held by this Committee, and I would like to recommend it to you, on the issue of how the Federal Government, in fact, causes the problem by the way that it does its contracting, so that it entices its own employees—because they are going to get

a windfall through contracting, it entices its own employees to go outside to a private company that is going to be the contractor for the Government.

And instead of having their own personnel manage this program, they are contracting it out, and I think that that is one of the crucial issues here that has caused this problem.

But, secondly, let me say that there is a second part. I tried to hire a research director for the National Highway Traffic Safety Administration, and under the Civil Service procedures it is very difficult to hire anyone, much less a scientist, because the administrators gets a choice of three individuals that are pre-screened.

And, often, the criteria that are laid out cause people who are not really qualified for the job to be the 3 that are among those you can choose. And I think that the procedures themselves also need to be addressed. That is a large measure of the problem, and it is not just the salary.

So I would urge that the Committee take a look at this. I would be glad to——

Chairman GLENN. I agree with that.

Ms. CLAYBROOK [continuing]. Suggest some other people who could help with this because it is the process of selection, I believe, and the contracting out and paying more from the very same Government agency.

Chairman GLENN. Yes.

Ms. CLAYBROOK. The same Government agency paid MIT more money to have someone who used to work there go work at MIT.

Chairman GLENN. Sure.

Ms. CLAYBROOK. That doesn't make any sense.

Chairman GLENN. I agree with that, and we are going to have to move on. We have one more witness here.

Mr. NADER. Just let me make one quick thing in response to what you just said.

Chairman GLENN. Fine.

Mr. NADER. NIH provides enormous research for the drug companies and the biotechnology companies, who then raise enormous bonuses and enticements to take away people who work in Government.

There is a tremendous giveaway of the taxpayer assay here, Senator. The kind of research that is developed and virtually given away to private profit-making corporations in the medical device, drug, and biotechnology area creates that kind of suction.

And I think we should address the giveaway in order to address the resources available to NIH and its people. It also must be pointed out that NIH traditionally has promoted from within to go up to the top. It very rarely has recruited from outside.

Secondly, it is the quality of the policy, Senator. Never before have our companies been paid more in terms of their president, CEO, and top officials, our major corporations in America. They have never received more money in terms of salary, bonuses, and everything else, and they have never been less able to produce quality products to keep up with the Japanese and the West Germans.

So money doesn't do it. It is the quality of the leadership, the quality of the competition that is important. Money doesn't do it.

Look at all the labs that are testing drugs for drug companies. They are getting tremendous money, and yet we see the tests are often phony, they are incompetent, they are inaccurate.

The private sector is living testimony to the proposition that great economic rewards at the top do not produce competent, innovative, far-seeing services and products out of those companies.

Ms. CLAYBROOK. Just by way of one example, the president of——

Chairman GLENN. Rapidly, because we really do have to move on.

Ms. CLAYBROOK. The chairmen of the board of Nissan and Toyota, who have out-competed us so substantially in the last 15 or 20 years, are paid about one-fifth to one-tenth what our CEOs of our auto companies are paid, and they have a very high standard of living and cost of living in Japan.

Chairman GLENN. Their CEOs here in this country?

Ms. CLAYBROOK. No, in Japan.

Chairman GLENN. Well, how about their CEOs in this country?

Ms. CLAYBROOK. Well, they make less than the chairman does in Japan. I am sure of that.

Chairman GLENN. Maybe so. I don't know. We are not trying to compete to get Japanese people into our industry. We are trying to make our industry competitive.

Mr. NADER. By the way, look at the defense industry, Senator. Northrop, General Dynamics—they pay very well, don't they, their executives, their top leaders? Look at the defects in the weapons systems. The principal disarmament movement in America comes from these companies. [Laughter.]

See, there is no——

Chairman GLENN. I have to move on Ralph; I really do. Thank you very much.

Mr. NADER. Can we submit materials for the record? [1]

Chairman GLENN. Sure, certainly. You can submit materials and they will be included in the record.

Chairman GLENN. Thank you very much. We appreciate your being here.

Mr. NADER. I want to thank you, Senator, for the hearing.

Chairman GLENN. Thank you.

Mr. SIEGEL. Thank you, Senator.

Chairman GLENN. Our next witness, who has been very patient and waiting, is James Dale Davidson, Chairman of the NTU, National Taxpayers Union.

Mr. Davidson, we are sorry you have had to wait so long, but it has been a very interesting discussion this morning, as I am sure you would agree.

TESTIMONY OF JAMES DALE DAVIDSON, CHAIRMAN, NATIONAL TAXPAYERS UNION,[2] ACCOMPANIED BY DAVID KEATING, EXECUTIVE VICE PRESIDENT, NATIONAL TAXPAYERS UNION

Mr. DAVIDSON. Thank you very much, Senator Glenn.

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[1] Information was not received by press time.

[2] See p. 208 for Mr. Davidson's prepared statement.

Chairman GLENN. Thank you.

Mr. DAVIDSON. I have asked David Keating, who is Executive Vice President of our group, to join me.

Chairman GLENN. Good. Welcome, Mr. Keating.

Mr. KEATING. Thank you.

Chairman GLENN. Good.

Mr. DAVIDSON. I appreciate the fact that your Committee is holding these hearings. I think that is a step in the right direction. As a representative of a non-profit organization with 150,000 members, I think I can speak fairly well to their opinions.

They believe, as you probably have guessed, that the pay increase is a bad idea. But let me say in another sense that I can sympathize very much with the desire on the part of the Congress and the top executives of Government and the judiciary and, indeed, everyone for higher pay.

In a better world, we would all be paid more than we are today, and I think that if we look at the problems that we have in many parts of the Government with compensation, I would quite agree that we have some real rigidities and some real difficulties, especially in the area of science and mathematics.

I think part of that problem goes back to a deeper problem that we failed to address in this country which your Committee might be able to look into in some respects. That is the fact that we do not produce in this society enough people who are capable of performing at the high standards that the world has set in science and mathematics.

We produce in this United States less than one Ph.D. in mathematics per day among U.S. citizens; whether they take their Ph.D. in Cambridge or Oxford or Heidelberg, one Ph.D. per day. And that is far too few. That is part of the reason that we have such a big problem in those technical fields. I believe that what we need to do is to create flexibility in the Government compensation program.

But let me address, I think, a deeper problem which in some ways may feed back to the question of why we have such a poor educational standard in this society, in spite of the fact that we pay more for education than any other country per capita.

The fact that we are not getting good education, top-flight scientists and top-flight mathematicians, is not due to the fact that the United States under-invests in education. We pay more than any other society, and many of the people who come from other countries to take Ph.D.s in science and mathematics in our great universities are a testament to the fact that we have produced institutions which can teach people. But we do not have the discipline in the schools and we lack incentives to motivate students to become good at those things that they need to know. But that is an aside.

I think the bigger question is the fact that we have a gigantic budget deficit facing this country. It would be good to pay people more. It would be good to pay the President of the United States $2 million, and members of Congress, I would not begrudge them millions, if we could afford it. However, we cannot.

We have today a budget that depends on an influx of foreign capital of $400 million a day to keep the spending going. And I put it to you that we are losing control of our national sovereignty; we

are becoming hostages to foreign capital. Interest rates can be set just as well in Tokyo today as they can in Washington.

And the great crisis that faces this country, far greater than the problem of whether Members of Congress can get a 50-percent pay hike, is the problem of how we are going to put our financial house in order.

There are three very good reasons why we cannot afford a pay hike now. One that has been discussed sub rosa here is that this is not merely a $70 million problem. It is a problem that will involve gigantic increases in costs throughout the Government.

We are talking about many people who—your comments and the comments of Senator Stevens and Senator Roth were talking about raising the pay of Government employees in general. The fact that their pay is now capped de facto by the Congressional pay means that when this pay increase goes into effect, it will raise Government costs right down the line, as we know. It will raise pension costs.

And we have a situation where Gramm-Rudman is not working. We had a $149 billion deficit in the fiscal year that ended September 1987, a $155 billion deficit in the fiscal year that ended last September, and we are now running at a $170 billion deficit annually. So the problem is not getting better; it is getting worse.

Now, that is something which most people understand. It is not a question of whether it would be better in a better world to pay Congressmen and others more money. It is the fact that we cannot afford to pay that kind of salary.

Another thing that I think we have shuffled under the rug, and which the Quadrennial Commission has done a great disservice in terms of the high standards of research that we would expect from a Government agency, especially with all that well-paid talent on the Commission, is that they have given us a very misconstrued picture of where the Congress stands in terms of its pay relative to historic levels.

Today, the Congress is paid twice as much—more than twice as much as its salary in 1920. It is paid $27,500 more than it was paid in 1949, which is just as relevant as how much less it is paid than it was in 1969, the highest pay of all time for members of Congress.

Today, the true compensation package of the Congress is $120,000 a year. If the pay goes up as recommended, the pension benefit will go up by 50 percent, and that is already $27,000 a year in real terms, which is one of the highest pension benefits of any institution in the world.

The average member of Congress today in real compensation gets more than the Prime Minister of England. I see no reason to raise that pay. There is certainly no evidence that we are going to get a better caliber of Congress or indeed that the United States can afford to meet that payment.

The Prime Minister of England has balanced the budget of England, and I think she deserves every penny she gets. If the Congress of the United States would balance the budget, I would be first in line to recommend a higher pay for those members of Congress.

But I think that there is another question which has been touched on. I won't dwell on it too much, but I think that we see

deep resentment of the low, mean way that this thing has been construed.

We have an example which I think, Senator, you will appreciate. If the question of whether to fund the Contras had been put to a commission with Adolfo Calero, let us say, as the chairman and it was recommended back to President Reagan that he could put any figure whatsoever that he pleased on funding to the Contras—and that would then go to Congress and within 30 days if both Houses of Congress did not vote it down and he did not veto their veto, then it would take effect. And members of Congress would just say, well, we were against aid to the Contras, but there was nothing we could do about it.

But that is not representative Government, Senator. It is not the type of policy that we would want to set as precedent for other areas where there may be tough choices to be made.

And so I believe that there is a greater interest here than simply the question of whether we need to find a way to compensate members of Congress. Of course, we need to compensate them, and they have always been compensated. Their pay started at $6 a day in the House of Representatives. It is now considerably more than that.

During the years, there have been many pay increases, and most of these were voted on with the support of the public. They were also voted, by the way, in general, in times when the budget was balanced; 1969 happened to be the last year that the Congress balanced the budget. Maybe they deserved a pay increase, as they don't today.

Mr. Wright, I think—and this is another issue which has not been brought out—is being paid $60,000 a year from now on as long as he keeps his post to prevent a vote on this pay increase.

Now, if there were any other issue and we could show that the Speaker of the House were going to benefit personally to the tune of $60,000 for obstructing the flow of legislation, you could call the police. I think that that is something that the American people rightly are upset by. I don't think it is a mistake, something that was fomented by members of the audience in the radio talk programs.

I think it is a genuine problem that the American people rightly have sniffed out that the Speaker of the House is being paid $60,000 not to have a vote. President Reagan gave himself a $55,000 increase in his pension in order to recommend this. Eighty-five percent of the American people disapprove of it.

The support for it is down at that level percentage of the population which is roughly equivalent to those who feel that we never went to the moon. And I think that that is not the sort of thing that we want to have as a precedent for the Government; that the idea is not to figure out what the people want and do it, but to figure out how we can get around what the people want because the people don't know what they are talking about.

I think that the people, surprisingly enough, tend to know better than we think. If we treat them otherwise, we are going to deplete a terrific resource in this country, which is the trust that the people put in the Government.

I believe, as I have said, that in a better world Members would be better paid. Those who would wish to have higher income have a method available to do it themselves. They could simply buy bonds and balance the budget. The capital gains on those bonds would provide quite a windfall.

In short, the members of our group, and I think thinking citizens around the country, understand that this country cannot afford a pay increase, and it will be more appropriate to revisit this issue at such time as we have balanced the budget and put a limit on this slippery slope down the road to bankruptcy that we presently are on.

Chairman GLENN. Okay, thank you. What level do you think Congressional pay should be set at? What would you recommend?

Mr. DAVIDSON. Well, I think the present pay is greater than it has been for three-quarters of this century. On average, the compensation of members of Congress was $81,802.80 in current dollars. So the Congress is better paid than it has been, in general.

I think the pay of Congressmen is perfectly appropriate at this point. I would not go so far as to recommend a pay cut for members of Congress, which is really the logic of these comparisons. But I do think that there is no compelling need to raise pay.

Chairman GLENN. Would you put us on a COLA basis like most labor contracts and other things are?

Mr. DAVIDSON. Well, let me say this, Senator, and I have thought a great deal about this. I think that the worker in a steel mill who is on a COLA or the teacher in a public school, either of those two persons has practically no effect on what the cost of living actually is.

But Members of Congress more richly deserve to suffer a pay loss when the cost of living goes up than anybody else because it is primarily, in my view, by the votes that the Congress takes in refusing year after year to be fiscally responsible that we do have this problem of a higher cost of living.

And so I would oppose having a cost of living increase for members of Congress, in general. I would also favor a change in the pension program, which I think is very strange. We have a very heavy compensation package that is overweighted toward pensions which give people an incentive to cling to the job because much of their income is going to come after they leave.

There are many, many members of Congress whose pension benefits today—the present value of them is in the millions, not just $1 million, but $2 million and $3 million. And I think that what we need to do is to eliminate the Government retirement program for Members of Congress and have a simple severance pay, as we have in many other areas.

Give every Member of Congress, whether he has served a day or 50 years, $1 million or some sum of money on his retirement and let him figure out how to make a go of it. If the Members of Congress were not insured so that they never have to suffer from the consequences of the inflationary policies that they pursue, there would be a lot fewer inflationary policies, in my view.

Chairman GLENN. Well, just for the record, I think nobody gets it from day one on. There is a 5-year vesting period, I think. I don't think you get anything before that.

Mr. DAVIDSON. I understand, but I am proposing that they do get it from day one on.

Chairman GLENN. Oh, I see, all right.

Mr. DAVIDSON. Perhaps they would be more concerned about what is good for the country than what would reelect.

Chairman GLENN. Yes. I don't want to get into a big budget argument here this morning because we do have to end very shortly. I have another commitment here that I am late for right now.

But I can't quite sit here and take all the blame for Congress being at the heart of all of our economic problems. It was administration policies put through where we had the 25-percent reduction in revenue, and all the business euphoria that was supposedly supposed to follow and more than make up that difference in new taxes just didn't occur.

And they weren't willing to adjust, and so here we are all these years later with an extra $2 trillion worth of debt. So, in fact, there were 4 years that the administration put in the most unbalanced budgets in all of American history.

Congress doesn't do the budgeting. The President is the budgeter by law.

Mr. DAVIDSON. Well, let me——

Chairman GLENN. And then he would berate the Congress within 30 days for not cutting more out of what he just submitted to us. So I couldn't let your charge of Congress being the sole culprit here go unchallenged.

Mr. DAVIDSON. Well, let me bat it back at you, if I may, with respect. I think, first of all, it is true that the President of the United States deserves much of the blame, and I am not one who would stint in the distribution of blame either to President Reagan, President Carter, President Ford, President Nixon, or those before who did not do what was necessary to keep this country on sound footing.

Secondly, I believe it says in the Constitution that the Congress appropriates money; the President can only propose. And I believe that the Congress should take that responsibility.

In the long history of this country, we have never been in such a sorry state in terms of our national debt. We are at the seventh year of a business cycle upturn, and I know you are a sophisticated investor and a man who understands the economy.

It is very unlikely that our deficit will not double or triple the next time we have a downturn.

Chairman GLENN. It is a business upturn solely based on solely increased national debt.

Mr. DAVIDSON. I agree with that.

Chairman GLENN. You can go down to any bank and borrow $10,000 and live like a king for about a week, and that is what we have been doing for 8 long years.

Mr. DAVIDSON. Well, we refused to pay the bills, but let me correct another thing that you said which I think is generally stated, but I believe misconstrues the facts. President Reagan's tax cuts did not reduce taxes as a portion of GNP over this period.

At the end of Reagan's term, taxes are higher as a proportion of GNP than they were when he took office. The problem has been entirely due to the growth of spending, and that is a fact.

Chairman GLENN. Well, when the rates went down, that was supposed to give us all this business euphoria that never developed.

Mr. DAVIDSON. I agree with you. I testified in favor of cutting the rates, and when I testified I said that I thought that we were kidding ourselves if we thought we were going to get a huge surge of revenues based upon what were really niggling, minor reductions in the marginal rates for the ordinary person.

Chairman GLENN. You obviously oppose the pay raise for Congress, and I have yet to state my position on that clearly. I am making up my mind after we have all these hearings and after we have the debate on the floor.

I have expressed myself as having a great deal of difficulty accepting a 51-percent raise to be the new norm and to catch us up all at one time. I don't know of many people in this country that got a 51-percent pay raise all in one fell swoop.

The least that could have been done was to phase it in over a several-year period of time. That might have made more sense. I have difficulty saying that we should go this route unless we do something about the honoraria.

You didn't address that one. I don't know whether you want to make a comment on it, but the one thing that you have heard me express myself on—I won't belabor it—is this linkage.

We can do away with the whole Congressional pay raise, but the linkage and the getting good people in Government to address its problems is not going to be done on as altruistic a basis as Mr. Nader indicated to us a few minutes ago.

Mr. DAVIDSON. Well, I might agree with you on that, but I think that Mr. Nader is also not entirely wrong when he points out that most of the people at the very top echelons of Government are not in Government on a permanent basis. The Federal judges, of course, are, but they get full pay for life.

And as you well know, there must be seven people banging on your door, or 10 people, wanting to be Federal judges for every one who becomes one.

Chairman GLENN. But how do you get the good people in at the third, the fourth, the fifth levels—the career public servants who are coming in to make a career out of Government? They are not the political appointees who, incidentally, turn over at the rate not of once every 2 years; it is once every 18 months.

Mr. DAVIDSON. Well, I agree with you.

Chairman GLENN. Once every 18 months.

Mr. DAVIDSON. Senator, you are absolutely right, but this business that we are talking about now is actually misdirected. What you are talking about is the need to get people in at the lower echelons.

Chairman GLENN. I am talking about top-level Civil Service positions. Pay raise opponents always keep coming back with, well, the top one-quarter of 1 percent or something is overpaid or they are all political anyway.

And I don't quarrel with that part of it, but I am concerned about the problems that I have mentioned in some detail. NIH has had 10 years of not being able to hire a senior biomedical scientist from the outside. NASA has to go out and have somebody as a gift who is already getting twice the salary to work on one of their pro-

grams. Now, that is not the way we are going to be competitive in this world.

Mr. DAVIDSON. I agree with you, and let me give you two potential solutions to this problem. I think one of them that we have to look at which I have mentioned already in my remarks this morning is that we have to reintroduce sensible flexibility into the Government's compensation programs.

We have a program which is oriented in terms of paying people in the Government service with pensions. We have people who retire from the military at 40 years of age, able people, very able people, who frequently go out and get jobs, and they then start collecting pensions.

This is, in my view, ridiculous. We have to stop over-compensating people at the end of their life cycle and pay people more at the present period. We need to have flexibility so we don't tie the pay of a nuclear engineer to the pay of a Congressman or the pay of the Federal judge. I agree with that.

Now, another thing we need to do in terms of flexibility is not only to have the compensation available to hire people, but we also have to go to the other side of that coin and fire people.

You have almost to get a Federal case to fire somebody out of the civil service, and that is one of the big reasons that many people of quality do not want to be in the civil service because they recognize that it isn't a matter of hiring somebody for efficiency; it is matter of, in many cases, being unable to fire somebody who is inefficient and they are stuck there. And that creates an atmosphere which depresses creativity, depresses excellence, and is contrary to the goal that you stated that we very much need to achieve.

Chairman GLENN. I would agree there are some other factors like that, but I think pay is certainly one of them.

We are going to have to end. I appreciate your being very patient with us this morning.

The hearing will stand in recess subject to the call of the Chair. Thank you very much.

[Whereupon, at 12:20 p.m., the Committee was adjourned.]

APPENDIX

TESTIMONY OF FRED WERTHEIMER

PRESIDENT

COMMON CAUSE

on

HONORARIA AND SALARY LEVELS

FOR TOP-LEVEL GOVERNMENT OFFICIALS

before the

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

JANUARY 31, 1989

(109)

Mr. Chairman, on behalf of Common Cause, I appreciate this opportunity to appear before the Governmental Affairs Committee in regard to the question of how our top-level officials are compensated. With the issue of compensation -- specifically, honoraria and salaries -- on the table, the 101st Congress has a major opportunity to begin to deal with what has come to be recognized as a crisis in government ethics here in Washington.

Full-time public officials, who have the responsibility for leading and governing the nation, should be adequately and fully compensated by the public to whom they are responsible. Public officials should not receive private fees and benefits from individuals or groups that may have matters pending before the government.

Common Cause supports the salary increases for top-level government officials proposed by President Reagan and endorsed by President Bush following the recommendations of the 1988 Quadrennial Commission. We also strongly urge the Congress to move immediately to enact a comprehensive statutory ban against honoraria. To abolish honoraria effectively, Congress must not only eliminate fees paid to Members for speaking, writing or making appearances, but also must identify and close off other

means by which special interests now channel financial benefits to Members of Congress or may attempt to channel benefits to Members in the future in lieu of honoraria.

If honoraria payments are banned without addressing other forms of special-interest largess, these other forms can be expected to pick up where speaking and appearance fees left off. These include excessive travel reimbursements, conversion of surplus campaign funds upon retirement through the so-called "grandfather clause," outside earnings including fees for legal and professional services, and others.

We realize that the proposed salary increases are large. These increases are intended to make up for the years in which Congress was incapable of enacting appropriate salary adjustments for itself and other top-level officials, causing these salaries to erode by some 35 percent since 1969. This is due in large part to the fact that congressional action on congressional salaries is inherently self-serving. Members of Congress are put in the position of "feathering their own nests" when they are asked to be involved in the process of increasing their own salaries. A solution to this problem would be to create a system that removes Congress from the process of setting their own salaries.

Regardless of whether or not salary adjustments take effect, however, Congress must move to abolish the honoraria system immediately. It is essential that Congress not allow any salary increases for Members of Congress on top of a compensation system that is corrupted by honoraria. But no matter what happens on the pay issue, honoraria is an intolerable system that Congress must not allow to continue.

As part of banning honoraria, Congress also should move to head off a "California Gold Rush" situation in which Members attempt to earn as much honoraria as possible before an honoraria ban takes effect. This could be done by enacting a pro rata provision that restricts honoraria during the 1989 calendar year based on the effective date of the honoraria ban.

I. THE NATION'S LEADERS SHOULD BE COMPENSATED ADEQUATELY BY THE PUBLIC THEY SERVE.

Top government officials should be paid appropriate salaries that reflect their vital responsibilities as leaders in our society.

The salaries of these officials have steadily lost significant purchasing power over the last two decades. Since 1969, inflation has increased twice as fast as the pace of salary increases -- while the Consumer Price Index has risen by 225 percent from 1969 to 1988, congressional salaries have risen 111 percent. If the $42,500 annual salary paid Members of Congress in 1969 had kept pace with inflation, it would be $137,000 today rather than the $89,500 current salary. The salaries of top officials in the other branches of government have similarly lost purchasing power during this period.

Compensation for top federal officials cannot -- and should not -- be competitive with similar leadership positions in the private sector. The opportunity to serve this country in a high-level government position is a special privilege not awarded to

most citizens. The notion that this kind of public service constitutes a personal sacrifice is one we categorically reject. At the same time, the average family income also is not an appropriate yardstick for determining the compensation levels of our nation's leaders.

Salaries of top-level government officials should reflect their important role in society. These are the people in whom we have invested the responsibility for governing and leading our nation. They manage critical programs and run huge departments with thousands of employees, make the laws of the land and interpret our laws and the Constitution.

As President Reagan stated in urging Congress to support his salary proposals, "Fair compensation for those who bear the responsibility for effective functioning of our government is critical at this juncture of history. The American people expect excellence at the top levels of government, and they deserve to get it."

II. CONGRESS MUST MOVE IMMEDIATELY TO ENACT A COMPREHENSIVE HONORARIA BAN.

The standards of performance and integrity the public is entitled to expect from public officials also demands an immediate end to the honoraria system. There is no defensible justification for the congressional honoraria system.

Honoraria payments to Members of Congress are a national scandal and one of the major reasons why there is a recognized

crisis in government ethics in Washington today. The honoraria practice is out of control. "The whole city and Congress got into an honoraria glut," a member of an honoraria-giving law firm told The Washington Post last week. One New York-based securities dealer cited by the Post increased its congressional honoraria disbursements from $13,250 in 1984 to $64,000 in 1985 to more than $100,000 in 1987.

The term "honoraria" has become one of Washington's most striking misnomers -- there is no "honor" involved on either end of the bargain when money is used by special interests to obtain political access and influence, and when elected representatives in Congress actively seek and accept the payments. It has reached the point where Members of Congress get $2,000 just for showing up for a breakfast.

The contempt in which the honoraria system is held throughout the nation is unmistakable from the number of newspapers that have editorialized for an honoraria ban, as well as from the harsh terms they have used to describe the practice. We would like to provide for the record a package of 245 editorials that have appeared in 207 newspapers across the country in the past months calling for an end to the honoraria system, a package we recently delivered to each House and Senate office.

In these editorials, honoraria are referred to by editorial writers variously as "legalized bribery," "legislative prostitution," "shameless pandering to special-interest payoffs," "bag money," "lobbyists payola," "a low-life practice," "appalling," and "a disgrace." The conflict of interest inherent

in the honoraria arrangement is widely recognized and denounced in the editorials. "The spectacle of lawmakers pocketing speaking fees and then voting on bills that affect these [special] interests is an intolerable scandal," one of the editorials, in The Denison (Texas) Herald, concluded.

When members of the agriculture committees receive honoraria money from tobacco interests, banking committee members get honoraria checks from the banking industry, and the nation's military contractors spread honoraria money among members of the armed services committees and defense appropriations subcommittees, it is clear that special interests are interested in currying favor and buying influence with Members of Congress. This message was broadcast unmistakably when the nation's top defense contractors provided more than $500,000 to Members of the House and Senate military oversight panels -- the armed services committees and defense appropriations subcommittees -- in 1987. And when a number of Members of the House Armed Services Procurement Subcommittee each received a $2,000 honoraria fee from a defense contractor just hours before the panel voted favorably on a matter of direct financial importance to the contractor, this message similarly was broadcast. The fact that honoraria receipts continue to break annual records also tells the public that special interests believe that honoraria payments represent money well spent.

Honoraria also undermines the case for regular and appropriate salary adjustments for Members of Congress. Indeed, regular salary increases for lawmakers are difficult to justify

when they routinely accept thousands of dollars in honoraria from private interests.

III. AN HONORARIA BAN MUST IDENTIFY AND CLOSE OFF OTHER FEES AND FINANCIAL BENEFITS SPECIAL INTERESTS MAY PROVIDE

Honoraria must be banned to prevent special interests from providing personal financial benefits to public officials. In order to abolish honoraria effectively, however, a ban must be defined so as to prevent special-interest money from finding alternative ways of flowing to lawmakers. As the 1988 Quadrennial Commission recommended, an honoraria ban should be drafted to foreclose

> the ability to receive consulting, professional or similar kinds of fees, payments for serving on boards, excessive travel, sport, or other entertainment expenses not reasonably necessary for the appearance involved, and similar substitutes for honoraria as they are known today or any other benefit that is the substantial equivalent of an honorarium.

It is important to anticipate and address other potential financial benefits for Members of Congress that could create the kinds of conflicts of interest raised by honoraria, such as conversion of campaign funds to personal use, the financial benefits derived in connection with honoraria donated to charity, and fees for professional and legal services and other outside earned income. Without such statutory limits on these forms of financial benefits, special-interest influence money will circumvent an honoraria ban. History is replete with imaginative ways in which special-interest money, like water, has found the path of least resistance.

Travel reimbursement: An increasingly popular means for special interests to funnel financial benefits to Members of Congress is to invite lawmakers on expensive trips to attractive locations and to provide reimbursement for the costs of the trips. Unless tight statutory limits are enacted on travel reimbursements by special interests, this practice will simply increase to pick up where honoraria left off.

In fact, the travel reimbursement rules already are being abused. House and Senate rules allow reimbursement for actual and necessary travel expenses incurred by a Member on an unofficial trip. But legitimate reimbursements for speaking and fact-finding trips are turning into all-expenses-paid, week-long family vacations. As Congressional Quarterly reported, "Although members tend to limit their expense-paid trips to two- or three-day stretches, some compile longer stays in one place by scheduling more than one speaking engagement. They are afforded that opportunity every January by the Tobacco Institute, the liquor lobby and other interest groups that hold overlapping and back-to-back meetings in Palm Springs, Calif."

In 1987 alone, according to a Common Cause review of financial disclosure records, the number of days lodging for which Members were reimbursed by special interests added up to more than 11 years. A number of these trips have been valued at well above the $2,000 fee for the speaking engagement around which the trips were arranged.

Strict limits should be imposed on travel reimbursements so that special-interest money is not being used to pay for getaways

and family vacations. Members of Congress, for example, who travel to address or meet with a group should be reimbursed only for actual and necessary expenses. That is, travel reimbursements should be allowed for no more than the cost of transportation, lodging and meals for three days in connection with the appearance, discussion or speech. "Actual and necessary expenses" should be defined as transportation, lodging and meals for no more than three days. Requirements for disclosure should be strengthened and the intent of the terms "actual and necessary" even within the three-day limit should be rigorously enforced.

This notion is not new, and in fact is intended under current rules. The Committee report accompanying the 1977 Senate conduct code provides an example of necessary expenses that may be properly reimbursed:

> If a Senator goes to make a speech in California, without receiving an honorarium, and he receives his plane fare and hotel room for the night of the speech, or the night before the speech, there would be no gift involved. However, if he goes out for the speech two days in advance and stays two days after, and his hotel room is paid for, the reimbursement for these expenses is greater than necessary and would be deemed a gift.

Unfortunately, these rules have not been enforced as intended and Members apparently have ignored them at their pleasure.

Strict, statutory limits on travel reimbursement must be part of an honoraria ban in order to prevent trips funded by special interests from becoming a means for influence money to flow around an honoraria ban.

Fees for Services and Serving on Boards: As you know, Senators are restricted by the Senate codes of conduct from

affiliating "with a firm, partnership, association or corporation for the purpose of providing professional services for compensation," permitting his or her name to be used by such an organization, or from serving "as an officer or member of the board of any publicly held or publicly regulated corporation, financial institution, or business entity." At the same time, there is no limit on the amount of outside earned income a Senator may accept.

House rules currently limit the amount of outside earned income Members may keep up to 30 percent of the value of their salaries, or $26,850 in 1988, but the rules do not contain the Senate restrictions on legal or professional fees or service on the boards of corporations, for example. While honoraria has been the most common way for House Members to obtain outside income, a number also have collected fees for such activities as practicing law or serving as bank directors while in Congress.

Executive branch officials are held to a limit on outside earned income of 15 percent of their salaries. In addition, they have much stronger restrictions on the acceptance of any outside earnings that may conflict with their official responsibilities.

The Senate rules restricting professional services for compensation and service on boards should be strengthened and enacted into law for all Members of Congress and congressional staff. In addition, Members' outside earned income should be limited to 15 percent of their salaries in order to protect against creative abuses of honoraria limits.

"Grandfather clause": Special interests, particularly those with political action committees (PACs), also at present can provide some House members with financial benefits in the form of deferred income. Nearly half of the Representatives serving in the 101st Congress -- 191 members -- are eligible to convert their excess campaign funds to personal use when they leave Congress because of the "grandfather clause," a provision in current law allowing Members of Congress who were in office on January 8, 1980 to convert unused campaign funds to personal use upon retirement.

As you know, Senators are forbidden by the Senate codes of conduct from converting campaign funds to private use at any time, even after they leave the Senate. There is, however, no real way to enforce this rule. We urge the Senate to support legislation to repeal the grandfather clause to prevent all Members of Congress from converting campaign funds to personal use after leaving office.

The striking growth in House Members' campaign coffers indicates that the amount of campaign money available for conversion to personal use is likely to increase dramatically. Congressional Quarterly reports, "A rising tide of political action committee (PAC) money is flowing into the campaign coffers of senior House members, putting more money than ever at the disposal" of "grandfathered" Members.

For example, House retirees from the 100th Congress have access to more than $1.5 million of the $2 million in surplus funds controlled by all congressional retirees since 1980, CQ reported. The 191 currently grandfathered Members reported some

$39 million in excess campaign funds following the recent election, or an average of about $200,000 each. Two grandfathered House Members have campaign warchests worth more than $1 million each.

Citing campaign finance reports filed with the Federal Election Commission (FEC), the Capitol Hill newspaper Roll Call reported that five of the House Members who were retiring or had been defeated in 1988 stood to convert to personal use more than $100,000 each in leftover campaign funds as of November 28, 1988; one retiring Member reported $452,000 in cash-on-hand according to his July 1 filing with the FEC.

Any attempt to prevent Members of Congress from raising outside income from special interests cannot ignore the dangers posed by the grandfather clause.

The fact that a large and growing percentage of campaign funds comes from PACs underscores the danger that the grandfather clause will provide a special-interest supplement for some Members' congressional pay. For grandfathered Members who accept PAC campaign contributions throughout their final terms, the potential link between special-interest money and personal enrichment is closest.

For these reasons, the grandfather clause should be repealed as part of an honoraria ban.

Charitable contributions: We have proposed that all forms of honoraria should be abolished, including honoraria fees not received but directed by Members of Congress to charitable

organizations. In our view, Members should not be in a position of having their charitable activities financed by special interests. It is essential, however, should charitable honoraria donations be allowed to continue, that Members are not able to accrue any form of private financial benefit from the donations, i.e., interest income or tax benefits.

Under current law, for example, charitable donations of honoraria can be used to shelter other outside income from federal income tax. Members can do this by establishing a Keogh retirement plan, which allows individuals to shelter from taxation as much as 25 percent of their outside earnings, up to $30,000 annually.

In other words, by accepting $120,000 in honoraria and giving $90,000 to charity, a Member with a Keogh plan could shelter from taxation one-quarter of that amount -- or the $30,000 in honoraria the Member kept. The remaining $90,000 would not be taxable either because it was given to charity and is deductible. If the Member received and kept $30,000 in honoraria, however, and no charitable contributions were made, only $7,500 would be sheltered and taxes would be owed on $22,500.

It is therefore essential that if Members of Congress continue to be allowed to direct honoraria to charitable organizations that Members are able to derive no personal financial benefit by way of Keogh plans or retaining the fees for any length of time in order to accrue interest income.

Limits must be enacted by law: To remain effective, the limits on honoraria and other outside income supplied by special interests must be adopted by statute.

It is clear from recent history that congressional rules pertaining to outside income are subject to prevailing political whims. Ever since 1977, Members of the Senate repeatedly have removed or weakened the outside earned income limitation restrictions, culminating in a move during the closing days of the 1985 session when Congress raised the honoraria limit to 40 percent.

Limits on outside income must be imposed by statute for another reason: Throughout the years, congressional ethics rules have been circumvented or left unenforced in the manner they were intended. The ethics committees, which are responsible for providing leadership on ethical issues and correctly interpreting and enforcing the ethics rules, have had a history of permissiveness and inaction.

IV. CONGRESS SHOULD NOT BE PART OF THE PROCESS THAT ADJUSTS SALARY LEVELS FOR MEMBERS OF CONGRESS.

While we urge Congress to support President Reagan's proposals for official salary increases, we also urge Congress to take steps to reform the manner in which these salaries are adjusted. If there had been regular cost-of-living increases for top-level government officials over the last two decades, we would not be faced with playing catch-up today.

A major reason why Congress only sporadically has adjusted these salaries is because the current system places Members of Congress in an inherently self-serving position and opens them to charges that they are simply acting to further their own financial interests.

As a result, Congress has avoided regularly adjusting the salaries of top-level officials, and lawmakers increasingly have turned to honoraria to supplement their incomes. At the same time, other top-level government officials, who cannot accept honoraria the way lawmakers do, have seen their salaries held hostage to Congress' unwillingness to act for themselves and unwillingness to set salaries for top officials in other branches of government higher than their own.

Congress attempted to deal with this conflict-of-interest situation in 1967 by creating the Quadrennial Commission as part of a reform of the process of establishing pay levels. Under the system existing before then, Congress was required to pass legislation to increase its pay. Under the new process established in 1967, salary levels recommended by the president under the advice of the Commission are delivered to Congress with the annual budget message. The recommended pay levels automatically take effect in 30 days unless Congress votes in the meantime to reject them by joint resolution (which requires the president's signature), or enacts a separate pay bill.

This process was designed to put distance between Congress and the task of determining legislative salaries. But there is not enough distance.

The present situation is not only a highly frustrating one for the parties involved, but also regularly produces gridlock, extreme controversy and a dangerously erratic and arbitrary record of pay increases.

Congress should be removed from the process of establishing salaries for top-level government officials by deleting the 30-day provision in the law that allows Members to override the president's salary recommendations. In addition, Congress should also explore ways to create a system of modest, regular salary adjustments for top government officials to avoid the need for significant increases after long periods of inaction.

Removing Congress from the salary-setting process would eliminate the inherent conflict of interest that occurs when Members of Congress have to decide their own salary levels.

Since the Constitution requires that compensation for Members of Congress "shall be ascertained by law," some questions have been raised about the constitutionality of taking the salary decision out of the hands of Congress.

In fact, the Constitution nowhere requires that Congress determine its specific salary levels. The Constitution simply requires that congressional salaries must be provided by law. This requirement would be met by the proposed process for setting top government salaries, as a U.S. Circuit Court determined in the 1987 suit Humphrey v. Baker:

> ... although the procedures established [by law] did not set salaries in the direct fashion that had [been] historically obtained, ... the Ascertainment Clause was not to be read inflexibly so as to require Congress to establish specific figures in specific legislation. Rather, it sufficed that

the procedures eventuating in the specific figures were set, i.e., ascertained, by law. [emphasis added]

CONCLUSION

By supporting a significant salary increase for top-level government officials, Congress can help restore lost purchasing power to these salaries and ensure that public officials who hold the vital responsibility of leading and governing the nation are paid adequately by the public they serve.

Regardless of whether these salaries are adjusted, however, the payment of honoraria and other financial benefits by special interests to Members of Congress must end immediately. There is no way to justify having public officials accept compensation from private interests.

We strongly urge this Committee, and the Congress as a whole, to send a strong public signal that it intends to work toward enacting a comprehensive, effective ban on honoraria and other such benefits immediately. By supporting the salary increases and enacting a comprehensive honoraria ban, Congress will take a major and necessary first step toward resolving the serious ethics problems in government today.

Testimony of U.S. Circuit Judge Frank M. Coffin, Chairman, Committee on the Judicial Branch of the United States Judicial Conference, before the U.S. Senate Committee on Governmental Affairs, January 31, 1989

Mr. Chairman and Members of the Committee:

It is a distinct honor to appear before you, speaking for the federal judiciary along with my distinguished colleague, Judge Leon Higginbotham.

First, a bit of perspective. Caught as you are between a solid case of higher compensation for the top officials in all three branches and the visceral simplistic reaction reflected in your mail, it is healthy to recall what Alexis de Tocqueville wrote about us a century and a half ago:

> In America the secondary officers are much better paid and the higher functionaries much worse than elsewhere. * * * These opposite effects result from the same cause: the people fix the salaries of the public officers in both cases, and the scale of remuneration is determined by a comparison with their own wants . . . . The sum which is scanty to the rich appears enormous to him whose wants do not extend beyond the necessities of life; and in his estimation, the governor of a state, with his twelve hundred or two thousand dollars a year, is a fortunate and enviable being.[1]

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[1] "Democracy in America," Phillips Bradley, ed. NY: Vintage Books, 1955, Vol. I p. 225.

Implicit in his comments is the criticism that this is not the wisest of courses for a republic. In short, this issue is one which evokes Burke's memorable speech to the Electors of Bristol in 1774: "Your representative owes you, not his industry only, but his judgment: and he betrays, instead of serving you, if he sacrifices it to your opinion."

In fairness, we should recognize that opinions on the pay issue are divided and that not every opinion is equal to every other. A fair question is this: Is the instinctive, understandable reaction of a person struggling to make both ends meet as weighty as the reflective judgment of a newspaper publisher and its editorial staff, whose business it is, while keeping the common touch, to focus their readers' minds on values important to their good governance. I have counted over fifty newspapers and periodicals, which I have received from judges in every part of the nation, endorsing the recommendations of the Quadrennial Commission and the President. I list them in the margin herewith.[2] I add

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[2]My file includes these publications: Newsweek, The Sunday Oregonian, The Chattanooga Times, The Houston Post, The San Francisco Chronicle, The Los Angeles Times, The National Law Journal, The Wilkes-Barre Times Leader (article by Tom Bigler), Roll Call, Judicature, The Portland (Maine) Press Herald (article by David Broder), Evening Express and Maine Sunday Telegram, The Washington Post, The New York Times, The Wall Street Journal, The Chicago Tribune, The Chicago Sun Times, The Democrat and Chronicle Times-Union (Rochester, New York), The Kansas City Times, The Boston Globe, The Boston Herald, The Atlanta Journal, The Atlanta Constitution, The Times-Picayune (New Orleans), The Recorder (Bay Area, San Francisco), USA Today, The Star-Ledger (Newark), The Norfolk Virginian - Pilot (article by James Kilpatrick), The Temple (Texas) Daily Telegraph, The Brunswick (Georgia) News, The Sun Republican (Springfield, Massachusetts), The Sun (Baltimore), The Savannah Morning News; The Miami Herald, The Florida Times-Union, The San Diego Union, The San Diego Daily

that this is only my own collection; I think it safe to say that there are at least two or three times this many similarly thoughtful and favorable endorsements throughout our nation. I urge you, therefore, to give the most reflective consideration to such a consensus of editorial approval from papers big and small, urban and rural, north, south, east and west.

* * *

The issues underlying the presidential compensation recommendations this year go to the very health of our government -- stopping infection by removing the reality and appearance of special interest influence; stopping anemia and malnutrition by making it possible for those with families, who are neither rich nor poor, to serve in all three branches; and stopping the excessive bleeding which occurs when top quality judges and administrators leave prematurely for greener pastures. On November 20, 1988, the General Accounting Office, your governmental watchdog, issued two vital transition reports to President Bush and House and Senate leaders. The first was perhaps expectable; it sounded the alarm for the most strenuous efforts to slash the deficit. The second, perhaps less expected, was that the Congress and the new administration must deal with a federal work force that is too often underpaid, unmotivated and demoralized. The report

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Transcript, The Philadelphia Inquirer, The Desert News (Salt Lake City, The Los Angeles Daily Journal, The Advertiser (Montgomery, Alabama), The Akron Beacon Journal, The Commercial Appeal (Memphis), The Wisconsin State Journal, The Fresno Bee, The Cincinnati Enquirer.

said: "Concern is mounting that the government's ability to acquire and retain good people is diminishing . . . . [T]he federal government's pay structure has broken down."

In other words, your Congressional watchdog signalled that controlling the deficit and reestablishing a realistic pay structure were both priority tasks.

Insofar as the pay structure of the federal judiciary is concerned, you are dealing with 700 Article III judges (roughly 544 district judges and 156 circuit judges). On these do our 260,000,000 people depend for the administration of justice in our federal courts -- a ratio of a third of a million people to one judge. Also vital parts of this system are our 271 bankruptcy judges and our 290 magistrates.

From this point on, I want to make my testimony a very condensed fact sheet. I have reviewed the submission our Committee on the Judicial Branch made to the Quadrennial Commission, "Simple Fairness," a copy of which has been given to each Senator. I have reviewed the testimony of others before the Commission and its own excellent report, "Fairness for our Public Servants." I have tried to distill the salient facts.

A. <u>The breach of contract and frustration of expectations</u>

1. While wage earners generally have just about kept up with the cost of living since 1969, judicial pay in real terms has eroded by 30 percent for district and circuit judges and 43 percent for Supreme Court justices.

We pick 1969 as the benchmark year because that was the first year reflecting the fairly successful efforts of the first Quadrennial Salary Commission to implement a realistic pay scale.

2. The 73 percent of all serving federal judges who took a very substantial pay cut on being appointed bargained for that -- but not the subsequent erosion.

3. It is true that since 1981 judges have suffered very little erosion and in some years have even made a slight gain on the cost of living. But these judges, on the average earned $120,000 before being appointed. They took a 40 percent cut on the expectation that in 1984 their pay would be equitably adjusted through the quadrennial process and that the erosion the system had suffered since 1969 would be rectified. But in that year there was no salary recommendation. And two years later, despite a recommendation for a substantial increase by the Commission, the final increase was a meager 10 percent. In 8 years, therefore, when the rest of the legal profession was steadily realizing increasingly greater compensation, newly appointed judges experienced a period of prolonged frustration of their expectations.

B. The impact of these breaches

1. On judges' standard of living and security: Our Federal Judges Survey reveals:

• 43-44 percent of judges report a decline on their standard of living;

• 61-63 percent report lowered savings and increased debt;

• One-third report the need for the judge or spouse to work part time;

• Over half have had to sell assets.

[I attach, for further details of the impact on judges -- financial, intellectual and emotional -- a copy of excerpts from the judges responses to Question 23 of our survey.]

2. <u>On resignations</u>

• More judges resigned between 1969 and 1986 than in the 180 years between 1789 and 1969;

• Between 1958 and 1973, 6 judges resigned; between 1974 and 1988, 57 resigned;

• We conducted exit interviews of 26 judges who resigned in the past 10 years; the level of their compensation was a factor in 20 of these cases;

• Resignations have also hit bankruptcy judges and magistrates. In 10 years over 60 percent of the bankruptcy judiciary has suffered turnover; and between 40 and 55 percent of magistrates have given consideration to

resigning or not seeking reappointment because of salary levels.

3. On prospective resignations

Even more ominous than the actual resignations to date is the very real and present prospect of large scale withdrawals from the judiciary of younger judges. In recent years one third of the new appointees have been 45 or younger; with the increasing costs of education, housing, medical care, etc, they now contemplate resigning if substantial relief is not forthcoming.

- Item: Our own survey indicates that 1 in 10 judges has already taken specific action looking to leaving the bench.
- Item: A survey by the American Bar Foundation shows 30 percent of judges planning on early resignation; of these 30 percent plan to leave within 5 years. The group most likely to leave are judges between the ages of 53 and 57 with 5 to 8 years of service.

4. On recruitment

The American Bar Foundation reports that 56 percent of state judicial selection commissioners say there are not enough qualified candidates for state judicial posts; a similar difficulty faces federal judicial selection officials. See pages 40-42 of our submission to the Salary Commission, "Simple Fairness" -- statements of

former Chief Justice Burger, Attorney Richard Donahue, and former Deputy Attorney General Edward Schmultz. More specifically, testimony before the Quadrennial Commission of representatives of the Hispanic National Bar Association, (Gilbert Paul Carrasco), Ms. Janine Harris of the National Conference of Women's Bar Associations, and Thomas A. Duckenfield of the National Bar Association revealed that:

> Minorities and women are still at the point where relatively few of them have reached a status where they would be considered top flight judicial candidates. And those representatives would be at a level of compensation where they could not consider a judgeship.
>
> As federal district judge, Joseph H. Rodriguez, himself of Hispanic background, puts it: "The judiciary is almost off limits to worthy candidates in minority communities."

C. The source of judges: the legal profession

The task of attracting and keeping top quality judges is conditioned by compensation levels in the legal profession. While judges willingly trade top compensation for the satisfactions of the judicial life, they see no merit in being near the bottom in compensation. As former district judge Gabrielle

McDonald, recently resigned, put it: "Why, if we're chosen as the best, are we paid the least?"

Leaving aside the astronomical salary figures commanded by partners in the large urban firms, we merely note the following comparisons, all of them representing lawyers are roughly median levels.

• Perhaps the most realistic measure: The median income of a partner of 25 years experience in a firm of any size all across the country: $157,479.

• Average salary of corporate general counsels: $234,902.

• A seven year associate at a top New York law firms: $169,000.

• 9 month salary for a professor at one of the 25 top law schools: $102,000 - $121,000.

* * *

D. Are Candidates for Judgeships Fungible?

A theme frequently voiced when we present our data on judicial resignations and the contemplated premature retirement or resignation of many judges is that there is no lack of judicial candidates waiting in the wings.

It is probably true that there are many very able wealthy lawyers, many very able public interest lawyers, and perhaps some lawyers without family responsibilities or with a spouse contributing substantial income. It is also probable that some state judges who have qualified

for a state pension would be interested in a federal judgeship. But so to limit the federal bench would spell the end of the pluralism that has been one of the saving graces of the federal judiciary.

What would have been excised would be highly competent younger middle class, minority and women lawyers with family responsibilities . . . a description that fits a vast part of our society. Perhaps these kinds of candidates would not be entirely excluded. There exists the very real threat that they would accept a judgeship and, after a period of 4 or 5 years resign, to accept a partnership paying several times their judicial rate and to retain the honorable title of "Judge" for the rest of their lives. This would make a federal judgeship a waystation in the career of a successful lawyer.

To settle for a bench of the rich, the poor, the elderly, the ascetic, the ideologue, and the upward mobile transient would in a very basic sense be to scuttle independence, excellence, balance, and stability of the Third Branch.

Addendum to
Statement of Judge Frank M. Coffin

Excerpts from Judges' Responses

to

Question 23 of Federal Judges Survey:

"Please provide any other comments you would like to make about your office, your compensation, or your expectation of continued service:"

* * *

005 -- Because I was required by statute to maintain a residence in one of the highest cost of living areas in the country, thus requiring relocation from a moderate cost-of-living area, I will, of necessity, consider resigning in the event of my husband's death.

011 -- Love for the art of judging has kept me at it, but two things now cause me to abandon my original and continued intent to serve "for life": (1) greatly diminished chance to practice that art in the caseload flood; (2) realization that I cannot leave anything to my family but a limited life insurance benefit.

012 -- If any effort had been made by the current administration to deal fairly with judges on compensation matters, I might have wanted to stay on the bench as long as possible. There is such meanness and such grudgery pay adjustments by the President and Congress that I now look forward to the shortest time to qualify for retirement.

013 -- The demographics explain my answers. Unmarried, with no dependents and a good supplemental income from teaching, writing and investments. I'm comfortable. If I had kids to bring up and put through school, I could not afford this job and could make 5-10 times the income with a good deal less work.

028 -- The fact that top law schools teaching salaries are substantially above federal judicial salaries is a sad commentary indeed. My standard of living remains good because my wife is a state district judge who makes almost as much as I do, and our children are grown.

032 -- My children are finally out of college. I no longer need as much income as I did. At the same time, it remains unfair to expect me to continue to serve when through inflation my actual income has been allowed to erode.

042 -- My family expenditures exceed my take home pay by about $1,000 per week and have done so since I have been a Federal Judge. I am now and for several years have been selling assets to pay expenses primarily for the cost of paying for higher education of three children. I feel this is a very unfair sacrifice.

044 -- I am proud to be a judge, and think I have been a good one during these past 15 years. But, I feel betrayed by Congress' failure to protect judges from inflation. My income as a lawyer had been several times the $40,000 paid to judges when I was appointed. I was prepared to make that sacrifice in order to follow a public service career. But I certainly expect to receive, in real dollars, what the job paid when I took it. Instead, my

financial reward for 15 years of public service has been an effective 40% pay cut.

051 -- I have 3 children to put through college. The current level of compensation will make this a very difficult task. I will have two options -- go into debt or get a higher paying job. This will not become a problem for me until 1993. I certainly hope that this compensation problem will be resolved by them. I love this job but I love my family more.

052 -- I cannot understand how a younger person with a one income family with no independent income or assets can afford to be a federal judge.

054 -- Most of my former law clerks earn substantially more than I do and have far better future prospects. We have reached the point where only young or rich attorneys can afford the position. While there are plenty of applicants for judgeships, the best lawyers can't afford the step down in income. Further, the prestige of the office is diminished when the younger attorneys appearing before us command a higher income.

061 -- The judge is not personally hurt that badly because of low compensation. It is a judge's family that previously enjoyed a good standard of living (education, vacations, clothing, cars, etc.) that is devastated. This leads to family strife that results in inferior judicial work . . . . Inadequate compensation will lead to resignation by the best judges, leaving an inferior judiciary.

067 -- The job is great. It is interesting, challenging and offers many advantages. But I work many more hours for much less

pay than I earned as a lawyer. The financial strain -- particularly with college expenses approaching -- is severe.

068 -- Certainly the level of compensation is substantially less than what I could earn in private practice. This problem is alleviated to some extent because my spouse is also employed. For young judges in two career households the worst aspect of the system is the requirement that the judge serve until age 65 before receiving any retirement benefits. When I am 65, I will have 33 years of service as a federal judge. The current system, with life tenure and an opportunity to receive either the salary of the office or the salary at retirement, offers much security. I fear, however, that a desire to do something else before I'm 65 will force me to resign earlier than I would otherwise -- simply to replace that future security through maximum earnings in my most productive years. I might quit at 45, for example, rather than 55.

073 -- I considered I was making a lifetime commitment. Judges who resign and capitalize on their judgeships pollute the entire system. We are making the job less and less attractive to lawyers who have the youth, zeal and willingness to commit to public service.

082 -- I am very proud of my service on the bench, and I am very glad to have done it. I would almost certainly not have undertaken it, however, had I known that the effective compensation would be so severely reduced. I do not wish to retire, but I have incurred obligations in the course of staying on the bench that will probably necessitate my returning to practice to discharge.

085 -- The job of U.S. District Judge is exciting and intellectually stimulating! The compensation is inadequate, however. My wife suffered a stroke a year ago and is in a nursing home. I do not earn enough to properly take care of her.

087 -- It is the best job that any lawyer could want. But the position of the independent, generalist federal district judge is under siege from many sources and directions. Current salary levels demean and denigrate the importance of the office and, simply, will result in less qualified judicial appointments over time, which, in turn, will result in diminished respect for the institution and further restrictions on its authority and independence. A vicious cycle!

114 -- If the salary is not increased substantially, the federal judiciary will become a haven for the very rich and the very mediocre trial lawyer or it will become a position of short duration to put on one's resume.

149 -- We are all very weary and very disgusted with the gross unfairness of our salary level as compared with what we are expected to do in our work. I've been teaching at night for over 12 years to make ends meet and I am very weary about that as well. I am sure my work suffers because of that, as my family has.

164 -- My answers reflect less stringency because my children are grown and my obligations have reached a plateau or are diminishing. Were I in my 40's with children to educate, I do not see how I could get by. I have had no opportunity to accumulate wealth, having been in the public service most of my life.

165 -- I have to admit that I didn't really look into the pay situation. I assumed that the government would provide an adequate salary, given the importance of the job. I was, and remain, absolutely shocked by the disgraceful treatment we receive on pay. If my wife for some reason could not continue to work, I would have to resign. As it is, if I can hang on till retirement, we'll have to sell our home and move to a less expensive part of the country. Thank goodness we have no children to educate. I would definitely have to leave the bench if we did.

174 -- I am also strongly considering resignation at age 65 to work as "counsel" to law firm; this should result in substantial compensation even on part time basis (Approx. $75,000 - $100,000)

177 -- The salary problem is not simply one of numbers. It is the gross disparity (and increasing) between the income of "moderately" successful lawyers in the community and federal judges. While a financial sacrifice is expected, it becomes a bit ridiculous to have federal judges earning about 25 percent or less of middle range partners in established firms. In my community, any lawyer of average competence earns at least $200,000 a year. Successful partners earn well over $500,000 and up to a million. Second year associates earn the same salary as federal judges. This disparity in a society that places substantial weight on material values, breeds a lack of respect for the judiciary. Eventually, there must be a mass exodus from the bench -- especially since the financial burdens of some of the judges in their forties are not yet upon them. (Age 46)

185 -- This year associates will soon make more than U.S. District Judges. All of my former law clerks in practice four years or more earn more than I do. I may be argued that lawyers make too much money. I leave that to the operation of the market-place.

It is also argued that there is no shortage of judicial candidates. There is also no shortage of players for the NFL as the strike proved. I don't see any teams playing with walk-on's or amateurs because they're cheap, however.

We can staff the federal bench with judges willing to work for less than reasonable compensation. We can do the same with an NFL team. At season's end they will find themselves in the same spot -- dead last! $89,500 is not a small amount of money; $89,500 is a small amount of money for a lawyer we would want to serve as a federal judge.

188 -- I must teach in order to be able to survive. I truly dislike the extra burden, but I have no choice (at least not while my children are in college.)

189 -- The independence of the judiciary and its ability to function at all in some effective way will be jeopardized unless federal judges are fairly compensated. We will lose younger experienced judges to private practice if something is not done. We will find then replacement judges less effective because many will be happy to get a "higher" salary because they cannot do well in private practice.

190 -- The work itself is challenging and I feel it is most suitable to my nature. It is a constant struggle financially. My wife has had to go back to school and is doing all she can in the work world. Without her contribution, I could not keep this job. We have sold our fine home and moved into a smaller one in a less desirable area. I am invited to so many things that I have to turn down and yet feel, even professionally that I should go to but can't without accepting charity from law firms, etc. Judges are being placed in a difficult spot. Finances are a constant concern. I would think that good sense would dictate that it should be otherwise.

192 -- Were it not for my state judicial pension, which is more than half of my federal judicial salary, my financial status would be clearly inadequate.

252 -- It's not just the compensation. It's demeaning to deal with five year lawyers who are better paid and still have to advise them what law is.

253 -- If any crisis, involving my family, occurred that required financial resources (including grandchildren) I would be obliged to resign. I have no cushion and worry a good deal about the unforeseen. That is much more troublesome to me than the decline in living standards which I generally anticipated. Also my continued tenure is totally dependent on my wife working.

260 -- The job of a federal judge is, from a practical point of view, closed to any able lawyer, who is the chief bread-winner in the household and who has not accumulated sufficient wealth to

subsidize his position. No accomplished lawyer in this community -- the sort of lawyer who ought to be on the bench -- would become a federal judge unless he/she is ready to retire from the practice of law.

272 -- The salary and benefit structure are so unfavorable, however, that I will seriously consider leaving and re-entering the practice of law at age 65, the first date I am eligible to seek senior status or retire. . . . There is no survivorship benefits worth speaking about and continued service past the age of retirement would be fiscally irresponsible.

274 -- 1. While the published salary is $89,500, my net take home pay is under $50,000 because perks paid by law firms, such as life and health insurance, must be withheld, along with survivors' benefits, social security (which few judges ever will use), and federal, state and local taxes.

PREPARED STATEMENT OF HON. A. LEON HIGGINBOTHAM, JR.

I thank you for the honor implicit in your request that I present an individual statement to this Senate Committee whose recommendations will have such a profound impact on the quality and pluralism of the federal judiciary for many future decades.[1] I know that you have received or will receive the thoughtful and authoritative testimony and statements of Chief Justice Rehnquist and Judge Frank Coffin in their representative capacities for the federal judiciary. I endorse, unequivocally, these views and I have great confidence in the thoroughness of their presentations and analyses.

I also endorse the Report of the 1989 Commission on Executive, Legislative, and Judicial Salaries,[2] and recommend that it receive the unequivocal support of the United States Senate. It is my hope that, after the most careful deliberation,

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2. I will limit my presentation to the Commission's report as it pertains to the federal judiciary and trust that others, much more familiar than I with the circumstance and necessity of salary increases for the members of the other branches of the government, will most ably present those cases.

the United States Senate will conclude -- just as former President Reagan did, and just as Present Bush has done -- that these increases are essential for "fairness for our public servants," and are also in the best interest of our country -- so that we may maintain an independent judiciary that is comprised of the most capable and conscientious citizens who come from a broad spectrum of experiences and backgrounds.

I recognize that I appear before a wise and thoughtful committee that must deal with a politically sensitive issue -- an issue that for the moment may not have the strong support of a populace that has been adequately informed on what would be the long run consequences if the pay raise is denied. I am not unaware that if, in casting your votes, your judgments are predicated solely upon momentary popularity or popular whim -- then the thoughtful Commission's report will not be supported by the United States Senate despite the fact that it has been endorsed, without equivocation, by former President Reagan and President Bush. My only answer to this perplexing political

dilemma is to invoke, respectfully, words uttered by President Kennedy when he was a member of this esteemed body. He said

> The voters selected us, in short, because they had confidence in our judgment and our ability to exercise that judgment from a position where we could determine what were their own best interests, as part of the nation's interests. This may mean that we must on occasion lead, inform, correct and sometimes even ignore constituent opinion, if we are to exercise fully that judgment for which we were elected. But acting without selfish motive or private bias, those who follow the dictates of an intelligent conscience are not aristocrats, demagogues, eccentrics or callous politicians insensitive to the feelings of the public. They expect -- and not without considerable trepidation -- their constituents to be the final judges of the wisdom of their course; but they have faith that those constituents -- today, tomorrow or even in another generation -- will at least respect the principles that motivated their independent stand. (emphasis added).

I submit that the proposed salary increase must be evaluated primarily in terms of what as the then Senator Kennedy suggested is in the nation's best interest.[3]

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3. I recognize that I may be asking the United States Senate to disprove the critique of Walter Lippman who once said of legislators that:

> [t]he decisive consideration is not whether the proposition is good but whether it is popular -- not whether it will work well and prove itself, but whether the active-talking constituents like it immediately.

I. Is the Right Question Being Asked?

From my perspective, gleaned from more than twenty-five years on the court, I am convinced that if one asks the wrong question, one will get a simplistic and usually wrong answer. With all due respect to the recent Washington Post poll concerning the public's perception of a salary increase for federal judges, (see, A Federal Pay Raise "Wish List", Washington Post, Jan. 28, 1989, at A11 col. 1.) I submit that the major problem with the current polls and the general reluctance to support the Commission's recommendations is that the wrong question is being asked. The wrong question, or at least, the over-simplified deceptive question is merely to inquire: "do the taxpayers want the salaries of federal judges to be increased?" The question, as thus framed, gives no insight to what the consequences will be if the pay raise is denied. I submit that the more rational question is: "should the American citizens have a significant diminution in the quality of justice

on our federal courts in order to save the modest cost of the proposed salary increase?"

I did not come here as a chauvinistic advocate for the individual interests of the present members of the judiciary. I came because I believe that in the long run, there is nothing more important for our nation than assuring that the federal judiciary will be populated with the highest caliber of talent (in terms of intellectual competence, judgment and human sensitivity) that is available. In my view, the Commission was correct in its opening sentence that the "public interest is best served when public offices are filled by the most capable and conscientious citizens willing to assume the burden."

If the President's recommendations are not approved, I respectfully submit that there will be a diminution in the long term tenure and the quality of the judges who accept judicial nomination.[4] As the result, the service of some of the most able young jurists will be abbreviated and, perhaps most regrettable,

4. See infra pp. 20-25; see also infra p. 26 n.22.

the service of some of the most able potential jurists will be lost entirely.

II. A Personal Perspective

Perhaps I can put these matters in better perspective by speaking from my own experiences and observations. Accordingly, I have prepared a statement that offers a personal view -- a candidly anecdotal history that addresses this issue from the perspective of one individual judge rather than from the institutional or constituent viewpoint of the federal judiciary. I am presenting somewhat of a case history of my personal experiences as a federal judge[5] and to a lesser extent of the judges of the Court of Appeals for the Third Circuit[6] and the

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5. I presently have more federal judicial seniority than any other active district or court of appeals judge who is not eligible for retirement.

6. In this discussion, I will refer to the Court of Appeals for the Third Circuit as it was composed in January 1988. At that time, the active judges of the court were: Chief Judge John J. Gibbons, Judge Collins J. Seitz, Judge Joseph F. Weis, Jr., Judge A. Leon Higginbotham, Jr., Judge Dolores K. Sloviter, Judge Edward R. Becker, Judge Walter K. Stapleton, Judge Carol Los Mansmann, Judge Morton I. Greenberg, Judge William D. Hutchinson, Judge Anthony J. Scirica and Judge Robert E. Cowen.

(continued...)

judges of the U.S. District Court for the Eastern District of Pennsylvania and the Chief Judges of each of the district courts in our circuit.[7] My hope is to demonstrate to this august body that the real difficulty that federal judges encounter with the present salary structure is not their inability to live lavishly, but the continued erosion of their real incomes and the concomittant decline in their ability to provide quality educational and other opportunities for their families.[8] My hope

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6. (...continued)
As of April 1988, Judge Weis assumed senior status. His successor, Judge Richard L. Nygaard, took office November 7, 1988.

7. I have included the Chief Judges of each federal district court in each state in our circuit because in many ways these judges are my contemporaries and have had similar experiences in the education of their children. They are:

Hon. Murray M. Schwartz (D. Del.)
Hon. John J. Gerry (D. N.J.)
Hon. John P. Fullam (E.D. Pa.)
Hon. William J. Nealon, Jr. (M.D. Pa.)
Hon. Maurice B. Cohill, Jr. (W.D. Pa.)

I have not included the Virgin Islands.

8. In my testimony before the Quadrennial Commission, I stated that "I don't feel badly when judges get second hand cars and keep them for years. They can live with that. I don't feel badly when judges have suits which are almost threadbare. They can live with that. And I don't feel badly if judges cannot afford country clubs. Society can survive that. But for all of us judges, we know that the passport of opportunity for us was education; the ability to attend the best universities in this
(continued...)

also is to demonstrate that our nation will be much better served by a salary structure for the federal judiciary that will attract and retain judges of extraordinary capabilities, who come from diverse backgrounds and experiences.

III.

A Twenty Five Year Perspective: Age and Quality Factors

Twenty-five years ago, in 1963 when I was nominated to the United States District Court for the Eastern District of Pennsylvania, my selection was viewed as unique for several reasons, one of which was the fact that I was 35 years old and, at that time, the youngest person to have been appointed to the federal bench during the previous 30 years. In fact, at that time it was almost a rarity -- and certainly a newsworthy event -- when anyone was appointed to the federal bench who was under

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8. (...continued)
nation and then go out and make a contribution to hopefully improve the quality of life. And judges today are confronted with the real problem as to whether they can provide for their children the type of educational opportunities which they had."

the age of 50.[9] After my appointment to the District Court, the next appointee (a day later) to the Eastern District was John Morgan Davis, who was 22 years my senior. He went on senior judge status after having been on the court for 10 years.[10] The judge who was appointed immediately prior to me, Ralph Body, was 59 years old when he was appointed in 1962. He died after

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9. When I became a member of the U.S. District Court for the Eastern District of Pennsylvania, the active judges were:

JUDGE	AGE APPT	DATE APPT	SENIOR STATUS	DEATH	YEARS ACTIVE SERVICE AS DIST. JUDGES
Clary	50	10/21/49	YES	8/01/77	20
Lord	52	5/20/54	YES	5/16/72	17
Van Dusen	43	8/01/55	YES		12*
Kraft	51	8/12/55	YES		15
Wood	53	9/10/59	YES	12/17/72	12
Lord III	49	9/15/61	YES		20
Freedman	56	9/22/61		3/13/71	3**
Luongo	41	9/22/61		7/19/86	24
Body	59	4/18/62	YES	6/02/73	10
Higginbotham	35	1/06/64			13***
Davis	57	1/07/64	YES	3/08/84	10

* Appointed to the United States Court of Appeals in 1967; became senior status judge in 1977. A complete listing of the judges of the District Court for the Eastern District from 1946 to the present that contai... inter alia, information regarding their ages at appointment, is attached at Addendum A.

** Appointed to the United States Court of Appeals in 1964.

*** Appointed to the United States Court of Appeals in 1977.

10. Judge Davis, due to reasons of health, was not able to carry a significant case load during his 10 years on senior status. He died in 1984.

having served only 11 years. None of the judges who were appointed after they were 52 years old had more than 13 years active judicial service. From the period 1949 to 1963, six of the nine appointees to the district court were 50 or older, and one of them was over 60. To phrase it differently, only two of the nine appointees were under the age of 49.[11]

The circumstances of my nomination in 1963 would no longer be so unique and in fact, are increasingly typical of many of the judges who are now being sought for and appointed to positions as federal judges. Many of these candidates are in their late 30's or early 40's.[12] While I do not have the total

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11. At the time of my appointment to the district court, there were seven judges on the Court of Appeals for the Third Circuit:

Circuit Judges	Age in 1964
John Biggs, Jr., Chief Judge	69
Gerald McLaughlin	71
Harry E. Kalodner	68
Austin L. Staley	62
William H. Hastie	60
J. Cullen Ganey	65
William F. Smith	61

12. See chart "Judges Appointed in 1964, 1986, 1987" attached at Addendum B.

data as to the length of active service of judges appointed in their late 50's or 60's I would guess that their years of active service as a federal judge would be less than one-half of the time spent of judges appointed while in their 30's or early 40's.[13] This difference in years of active service is significant particularly because it has been suggested by Chief Justice Burger that it takes, for even a most competent lawyer, at least five years on the bench for him or her to reach "peak performance."[14]

Since recently passing the mystical hurdle of three score years, I now concede that wisdom accumulates with age. Nevertheless, I submit that the country and the federal judiciary have benefitted significantly from the appointment of judges in their late 30's and early 40's. First, these judges

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13. In the Eastern District of Pennsylvania, the district judges under the age of 50 who were appointed between the years 1954-1964, have served at least twice as long as judges appointed over the age of fifty, and more than three times as long as judges who were appointed over the age of 60.

14. Chief Justice Emeritus Warren Burger, quoted in Corporate Committee for Fair Compensation of the Federal Judiciary, Federal Judicial Salaries: A Gamble with the Future.

are able to give a much longer active tenure to the judiciary and each brings a keen intellect and insight, honed by the very nature of having been serious students of and actual participants in the federal judicial process for a significant number of years, and reflected by the fact that prior to nomination to the federal bench he or she has distinguished himself or herself in some way in the profession.

To paraphrase Justice Holmes, since a page of history is worth a volume of logic,[15] let me give you an abbreviated case history on the quality of the judges on the Court of Appeals for the Third Circuit. Of the eleven active judges,[16] seven had previously been United States District Court Judges: myself, Judge Weis, who was appointed to the federal district court at age 47, Judge Becker, who was appointed to the federal district court at age 37, Judge Stapleton, who was appointed to the federal district court at age 36, Judge Mansmann, who was

15. New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921).

16. See footnote 1, supra.

appointed to the federal district court at age 39, Judge Scirica, who was appointed to the federal district court at age 44 and Judge Cowen, who was appointed the federal district court at age 55. One other colleague, Judge Seitz, had been a distinguished and admired State Chancellor of Delaware, and was appointed a state judge at the age of 32. Chief Judge Gibbons, who is now regarded universally as one of the premier judges of the nation, and one of the leading scholar-judges in the country, was appointed to the Court of Appeals at age 45. Judge Sloviter, who had a distinguished career in both academia and in private practice, was appointed to the federal judiciary, on the Court of Appeals, at age 47.

As I look at my colleagues who have endured the economic travails of declining purchasing power for one or two decades, while at the same time maintaining the highest level of judicial and ethical standards, I am filled with respect and admiration. They are individuals with extraordinary talent, who, by any objective measure, are premier judges and they have great love

for our country and our judicial work. Their excellence is reflected in the ratings that they received by the American Bar Association at the time of their nominations to our court. Most of the judges at the time of their appointments to the Court of Appeals, were evaluated by the American Bar Association as "exceptionally well qualified" -- the highest rating that can be given to a nominee. Other judges received the significant rating of "well qualified." These judges have not given their skills and insights in the service of the federal judiciary, however, without significant personal sacrifice and financial burden. Certainly, they did so willingly and with great pride. I believe that if they had to make the choices over, most would choose again to offer their talents to the nation. My belief that many of these extraordinary judges, with the knowledge that they now have, would still choose to serve our country comes, in part, from my eternal optimism, but more from my personal familiarity with these superb individuals. To my mind, however, it makes no sense to say that we should continue to impose

significant financial burdens upon federal judges and continue to allow their real incomes to decline, because we expect that extraordinary individuals like those on the Third Circuit will, in the future, be willing to make the sacrifices necessary to hold this office. That is an expectation that is born of too much optimism and too little recognition of present reality.

IV. Education Costs

I trust that I have demonstrated that when my colleagues were appointed to the bench, the public benefitted greatly both because of their relative youth and because of their tremendous competence. However, a foreseeable consequence of appointing persons in their 40's or younger to the federal bench is the fact that they will have families with minor children and, thus, concerns about education costs. If they choose to live in certain areas of the country, and desire to provide quality opportunities for their children from elementary school through college and graduate school, those financial demands can be

extraordinary. My survey has revealed that every Chief Judge of the district courts in our Circuit and nine of the 11 judges on our court of appeals came to the federal judiciary with children in the elementary or high school level.[17] Most of my current colleagues, either for personal reasons or because they believed that the quality of education was higher, sent all or most of their children to parochial or independent schools and thereby assumed a significantly increased educational cost. In contrast, in 1964 with but one or possibly two exceptions, none of my eleven colleagues on the U.S. District Court for the Eastern District of Pennsylvania had children in elementary or high school and most of them had children who had already graduated from college or graduate school.

I have had many long conversations with some of my former colleagues on the district court, with the Chief Judges of

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17. The other two Judges, Judges Morton Greenberg and William Hutchinson were appointed to our Court in 1987, and had been distinguished state judges, one on the New Jersey Appellate Division Court and the other on the Pennsylvania Supreme Court. On November 7, 1988, Judge Nygaard, formerly of the Common Pleas Court of Erie, Pennsylvania, took his oath of office.

the district courts in our circuit, and with my present and recent colleagues on the Court of Appeals. Many have revealed financial horror stories. There were years, for some judges, when their children's education costs have ranged between 60 and 100 percent of their net federal judicial salary. For some, the only way to survive economically was each year to borrow increasing amounts of money, get additional mortgages on their homes and\or teach at universities.[18]

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18. I have attached, at Addendum C, a copy of a survey that I distributed to my colleagues on the court of appeals and to the chief judges of the district courts within our circuit. As indicated on the survey, I will not discuss any individual judge's circumstances in detail. I will, however, highlight some of the remarkable -- though, I believe typical of federal judges nationwide -- results of the survey:

> -- among the active judges, only two had any children older than 21 when appointed. Two others had children who were either 20 or 21, but both of those judges also had children under the age of 19. The two judges who had children older than 21 were both appointed to the federal bench when they were 54 years old or older.
>
> -- the judges reported that the range of education costs for their children during various years ran as high as 100% of their net judicial income. The average for most judges during the peak of education costs for their children was more than 60% o net judicial income.
>
> -- in one, truly startling instance, one judge revealed that for a period of eight years, the education costs and taxes incurred exceeded the judge's gross judicial income.

V. A Valued Pluralism For Our Future

As important as the individual excellence of any one colleague, my colleagues' collective experiences cover a broad range of the law, in both the public and private sectors. We have a marvelous pluralism[19] on our court that is enriched by

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19. I use the term "pluralism," rather than "diversity" because the definition of pluralism more completely characterizes the manner by which, ideally, our federal judiciary should be constituted: that is, reflective of many points along the spectrum and not merely a few different points or even merely the extremes.

Of course, judges vote and adjudicate as independent persons. They are not representatives for any specific constituency. They must strive always to be impartial and fair. Because of the many interstitial zones in the adjudicative process, however, where there is no clear controlling precedent, or sufficient specific legislative direction, it is impossible to eliminate the impact of one's experience.

Justice Benjamin Cardoza has advised us that

> We do not pick our rules of law full-blossomed from the trees. Every judge consulting his own experience must be conscious of times when a free exercise of will, directed of set purpose to the furtherance of the common good, determined the form and tendency of a rule which at that moment took its origin in one creative act. (emphasis added)

Cardoza - Nature of the Judicial Process, p. 103-4.

This concept has been explained in greater detail by Professor Charles Warren and Justice Oliver Wendell Holmes:

> The Court is not an organism dissociated from the conditions and history of the times in which it exists. It does not formulate and deliver its opinions in a

(continued...)

diverse backgrounds; differences in race, gender and religion; and prior practice interests and expertise that cover a broad range of experiences: from state government work to other types of public service, and from academia to private sector employment. With our present judicial salary scale, our judiciary faces a difficult future if we desire to continue the pluralism and competence that exemplifies the present judges on the United States Court of Appeals for the Third Circuit, the Judges on the U.S. District Court for the Eastern District of

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19. (...continued)

> legal vacuum. Its Judges are not abstract and impersonal oracles, but are men whose views are necessarily, though by no conscious intent, affected by inheritance, education, and environment and by the impact of history past and present

-- Charles Warren, I The Supreme Court United States History, (Boston: Little, Brown, 1926) p.2.

> The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.

-- Oliver Wendell Holmes, The Common Law, (Boston: Little, Brown, 1881), p.1.

See also, Higginbotham, The Life of the Law: Values, Commitment Craftsmanship, 100 Harv. L. Rev. 795 (1987).

Pennsylvania as I knew it between 1964 and 1977, or the Chief Judges of the District Courts in our Circuit. The greatness of these courts is that they have not been dominated by any monolithic type or background. They have not been a collection of identical clones. They were not dominated solely by lawyers who had accumulated vast wealth, either through law practice, inheritance, or marriage. They are not dominated by former state judges. They are not dominated by ideologues. Instead, they were composed of some lawyers who had extraordinary careers in the public sector or with small law firms, and some tremendously capable lawyers who had accumulated relatively very few assets, and some lawyers from the big firms' lucrative practices, and some lawyers with state court experience. There are some who were born into extraordinary wealth, and others who had endured poverty and racism in their youth. The goal of achieving federal courts with such pluralism and breadth in the future is made much more difficult by a salary that falls significantly behind the needs of many of the individuals that we desire to attract. Even

in the last couple of years, there have been significant indicia that some federal courts are becoming less diverse in background and less representative of the broader American spectrum.

With the continued deterioration of the present level of financial compensation, I am fearful that in the future, our courts will be filled almost solely by the following types:

1) Persons of enormous wealth for whom the amount of the current judicial salary is almost irrelevant.

2) Persons of average means, in their late 50's or early 60's who no longer have significant educational expenses for their children, have paid the mortgages for their homes and who therefore, perhaps, can adjust more easily to the present judicial salaries.

3) Persons who have served in state courts or other institutions and have already accrued pensions that, when added

to the current federal salary, allow them to meet their financial obligations with less difficulty.[20]

4) Young persons who accept federal judgeships not intending to serve the full term, but who view their appointments as three to six year way stations that will lead to a far more affluent future.

5) Pure ideologues or persons of very marginal competence who could not earn the equivalent income of a federal judge's salary if they were forced to compete in the legal marketplace. For those who fall into this latter category, their advancement to the federal judiciary takes them to a level that exceeds either their basic competence or the balanced judgment that should inhere in the judicial process.

If this sad scenario occurs, and the pluralism of our judiciary is diminished, it will be bad for the judiciary and

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20. My comments are not intended to suggest that I do not hold my recently appointed colleagues from the state bench in great esteem. Judge Seitz's distinguished service amply demonstrates how well the federal judiciary is served by judges who are former state court judges. My concerns are addressed to the "mix" of our entire court in the future and not to the qualities or background of any individual judge.

tragic for our country. If we do not want our courts to be solely a bastion of the very wealthy, the pensioner, the marginally competent or the ideologue, the salaries of federal judges must be increased to create a milieu in which non-affluent lawyers with young children can accept judicial appointments, without seriously impairing the educational options of their children or having to moonlight extensively by teaching or speaking to avoid economic collapse.

IV. A Personal Reference

It is with some diffidence that I make my statement even more personal. However, let me first add that my comments are not designed to attract sympathy for my past e[illegible]riences or to seek recompense for prior deficits and broken promises. For, in four years and twenty-five days, I will be eligible to resign from the judiciary, and collect my pension. I have remained a federal judge despite a plethora of other significant options,

and I don't regret my decision.[21] However, I am fearful that many of my potential successors, who look at the last two decades of the deterioration of judges' real incomes, will not accept a federal judgeship since they will assume that the tragic past will be the prologue for the future.[22] If they accept, they may be forced to do what my former colleague on the District Court,

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21. On several occasions, I have been advised that my name was being given significant consideration for presidencies of major universities, (including one Ivy League college), the commissionership of a major national sports league, and other lucrative options in the private sector, which would have increased my salary fourfold or fivefold.

22. If they had it to do over again, most judges said they would be interested in seeking an appointment as a Federal judge. See Simple Fairness, Chart C (survey of federal judges). The extent of their interest differed markedly, however, depending on the salary system under consideration. While 459 judges (or 73% of those who responded to the survey) said they would be extremely interested in appointment under an adjusted inflation-resistant system, only 150 (or 24 percent) would be extremely interested in appointment under the current system. At the opposite end of the scale, 55 judges (nine percent) said they would not be interested at all in reappointment under the current salary system, while only three (less than half of one percent) were completely uninterested under an adjusted system. The inescapable conclusions is that many qualified men and women will turn down Federal judicial appointments unless salaries are raised. Indeed, one respondent noted that he could currently afford to be a Federal judge but that he "turned it down while married with school age children."
Simple Fairness, p. 38.

Judge Masterson, did: resign because of an inability to meet college tuition costs.[23]

If you will examine Chart E contained within the statement Simple Fairness, it shows that I, and all other judges who were on the bench in 1969, have sustained a 30% loss in real salary. Another chart could have shown that, at the same time, the educational costs of private schools and universities have increased as much as 442% percent, (see Addendum D). The vectors have been going in opposite directions, our salaries have not kept pace with inflation, but the increases of our education costs have exceeded the inflation rate. It is not a coincidence that as these losses in real salary started to occur, I started

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23. As explained by former Judge Thomas A. Masterson:

> [A]t that time I was 45 years old, I had five children. The oldest was just about to go to college . . . . I was going to be facing three or four kids in college at the same time . . . . And I concluded that I'd resign . . . [e]xplicitly . . . on the ground that I could not adequately take care of my family.

Promises Made, Promises Still Unkept: Restoration of Inflation Induced Salary Cuts for Top Government Officials (1986-1987), p. 30.

I note the comment of another distinguished judge, who told the Chief Justice that his resignation had been forced by the disease called "maltuition."

to teach, since there were years when the education costs for my family almost equalled my entire net judicial salary.

Newly appointed judges today are leaving the bench after only five or ten years rather than confront the economic problems that I encountered during my twenty four years on the bench.[24] I submit that the recent increase in resignations is just the tip of the iceberg of what will happen in the next decade if the

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24. I am sure that you are aware of the testimony that was presented to the Quadrennial Commission by Gabrielle McDonald, formerly United States District Court Judge for the Southern District of Texas (now a member of the firm Matthews & Branscomb, Austin, Texas). In many ways, former Judge McDonald's circumstances present the most sad instance of what we can anticipate will be a common occurrence in the future if federal judicial salaries continue to decrease in real terms. By all accounts, she was a hard working, superb jurist with keen insight into the law, and sensitivity to the individuals involved in the cases over which she presided. Her presence on the court exemplified the greatest ideals of pluralism with excellence to which our judicial system should aspire. In my view, our nation's loss by former Judge McDonald's early departure from the bench provides the best (or rather, worst) lesson that should inform the decisions that this body will be make about our judiciary for the future. See also testimony of former United States District Judge Robert Duncan before the Quadrennial Commission, where he stated "After 11 1/2 years of 60-65 hour work weeks, in one of the busiest districts in the United States, my life had been threatened on two occasions, my 9 year old daughter's life had been threatened, my wife was still working, we had not traveled outside the country, and I was unable to foresee how I could afford to send my youngest daughter to the university of our choice, I came to believe that my employer had not treated me fairly in an economic sense."

salaries of federal judges continue to decline in terms of real dollars.[25]

V.

Let me conclude by stating that my 25 years as a federal judge have provided me with an exciting and thrilling professional experience, and I am grateful for the opportunity to have served my country. Because of the many privileges and other satisfactions that the position offers, I do not expect federal judges to get salaries anywhere near the equivalent of successful private practitioners. That fact notwithstanding, I submit that to maintain the desired threshold of both pluralism and competence of the federal judiciary, the salaries must meet at

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25. Part of the problem is that federal judges do not have any vested pension rights and are not entitled to any income whatsoever if they resign prior to the age of 65, regardless of their years of service. I can imagine the following scenario: A judge, 45 years old, with two or three children approaching college age. If our present salaries stay at their depressed state, he or she recognizes that it will be impossible to hold on for many years. If the judge waits a few years, hoping that salaries will be increased, and they are not, then the judge faces an insurmountable hardship because he or she will have no pension rights, even if he or she stays until age 60. The solution that soon becomes desirable, then, is to abandon ship earlier, when there are such tremendous options in private practice, rather than staying on several more years and incurring disproportionately heavy debts.

least the equivalent of the real base salary of federal judges in 1969.

Failure to accept the President's recommendation for federal judicial salary increases will, in my view, result in the eventual restructuring of the federal courts so that the federal judiciary will no longer be a viable option for the young and talented who are not also affluent. We will lose what has been a major core of strength in the federal judiciary during the last three decades, and miss the opportunity to tap a resource that would assure a stronger judiciary in the coming decades. Instead the court will become a haven solely for the rich, the pensioner, the ideologue, and the marginally competent.[26] I don't believe that our country should incur the diminution in the pluralism of talent that has provided impressive excellence in the administration of justice throughout our land. Our ideals for the administration of justice and our country deserve

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26. Of course, I believe that it is desirable that some judges come from affluent backgrounds and that some judges be former state judges. But I do not think these groups should constitute the majority of the federal judiciary.

better.[27]

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27. I will take this opportunity to acknowledge, and express my appreciation to, those persons who have assisted in the research and organization of data for this statement: William R. Burchill, Jr., General Counsel, Administrative Office of the United States Courts; Roberta Cross, Reference Librarian, Library of the Court of Appeals for the Third Circuit; Dr. Evelyn Brooks-Higginbotham, University of Pennsylvania, History Department, Mona Gerdes, MBA Candidate, University of Pennsylvania, Wharton School of Finance, and Michael Kunz, Clerk of the District Court for the Eastern District of Pennsylvania. As always, I acknowledge the editorial and research assistance of my superb law clerks: Bryan Blaney, Steven Hawkins and Susan Mann.

ADDENDUM A

A1

JUDGE	AGE APPT	DATE APPT	SENIOR STATUS	DEATH	RESIGN	YEARS SERVICE *	
MC GRANERY	51	8/07/46		12/23/62		5	1
FOLLMER	60	8/08/46	YES	5/03/71		21	
CLARY	50	10/21/49	YES	8/01/77		20	
GRIM	45	10/21/49		12/07/65		16	
LORD	52	5/20/54	YES	5/16/72		17	
VAN DUSEN	43	8/01/55	YES			12	2
KRAFT	51	8/12/55	YES			15	
EGAN	63	8/26/57		7/06/61		3	
WOOD	53	9/10/59	YES	12/17/72		12	
LORD III	49	9/15/61	YES			20	
FREEDMAN	56	9/22/61		3/13/71		3	3
LUONGO	41	9/22/61		7/19/86		24	
BODY	59	4/18/62	YES	6/02/73		10	
HIGGINBOTHAM	35	1/06/64				13	4
DAVIS	57	1/07/64	YES	3/08/84		10	
FULLAM	45	8/11/66				22	
WEINER	44	6/14/67				21	
MASTERSON	39	6/16/67			11/16/73	5	
TROUTMAN	52	6/16/67	YES			15	
HANNUM	54	5/06/69	YES			15	
BECKER	37	10/14/70				11	5
VAN ARTSDALEN	50	10/15/70	YES			15	
HUYETT	49	10/15/70	YES			17	
DITTER	48	10/15/70	YES			16	
GORBEY	50	12/21/70		10/24/77		6	
BRODERICK	56	4/23/71	YES			13	
NEWCOMER	48	11/30/71	YES			16	
GREEN	48	12/09/71	YES			16	
BECHTLE	44	3/07/72				16	
FOGEL	44	6/29/73			5/01/78	4	
MC GLYNN	49	3/08/74				14	
CAHN	41	12/20/74				13	
POLLAK	55	7/12/78				10	
SHAPIRO	50	8/11/78				10	
GILES	36	11/27/79				8	
O'NEIL	55	8/05/83				5	
KELLY	55	8/06/83				5	
KATZ	52	8/06/83				5	
SCIRICA	43	10/19/84				2	6
LUDWIG	57	10/17/85				3	
KELLY	54	06/26/87				1	
VAN ANTWERPEN	46	12/09/87					
GAWTHROP	45	12/09/87					
REED	57	5/06/88					
DUBOIS	57	9/06/88					
HUTTON	50	9/06/88					

* YEARS OF ACTIVE SERVICE
1 APPOINTED ATTORNEY GENERAL ON 5/26/52
2 ELEVATED TO COURT OF APPEALS IN 1967
3 ELEVATED TO COURT OF APPEALS IN 1964
4 ELEVATED TO COURT OF APPEALS ON 11/07/77
5 ELEVATED TO COURT OF APPEALS ON 12/03/81
6 ELEVATED TO COURT OF APPEALS ON 9/14/87

ADDENDUM B

JUDGES APPOINTED IN 1964, 1986, 1987 (ORIGINAL AND ELEVATED)

Explanation and Bibliography

In the Name column an "*" after a judge's name indicates an elevated judge; look at Notes column for previous federal judicial position.

Age column was determined by subtracting birth year from the year of appointment to present federal judicial position. Age of judge at time of previous federal judicial position is in Notes column.

Judges listed under the five APT. YR. groupings in the Name column include only those judges who were appointed to district or circuit judicial positions. Special court appointments have been excluded (i.e. Bankruptcy, Claims). This column reflects the current or ending position (upon death) of the judge.

Almanac of the Federal Judiciary v.1, Lawletters Inc., Chicago, c. 1988.

Almanac of the Federal Judiciary v.2, Lawletters Inc., Chicago, c. 1988.

Federal Judges and Justices: A Current Listing of Nominations, Confirmations, Elevations, Resignations, Retirements, Fred Rothman & Co., c. 1988.

Judges of the United States, The Judicial Conference of the United States, c. 1983.

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3d Cir. Lib.
11/8/88

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JUDGES APPOINTED IN 1964, 1986, 1987 (original and elevated)

NAME		COURT	AGE	DIED	NOTES
** APT. YR. 1964					
Anderson, Robert P.	*	2d Cir.	58	1978	D CT '54 /age 48
Bratton, Howard		D NM	42	----	Sr.Stat.
Christie, Sidney L.		D WV	61	1974	
Davis, John M.		ED PA	58	1984	
Ely, Walter R.		9th Cir.	51	1984	
Freedman, Abraham L.	*	3d Cir.	60	1971	ED PA '61/age 57
Gordon, Eugene A.		MD NC	47	----	Sr.Stat.
Hemphill, Robert W.		D SC	49	1983	
McNichols, Raymond, C.		D ID	50	-??-	
Muecke, Charles A.		D AZ	46	----	Sr.Stat.
Port, Edmund		ND NY	58	1986	
Simons, Charles E.		D SC	48	----	Sr.Stat.
Suttle, Dorwin W.		WD TX	58	----	Sr.Stat.
Weber, Gerald J.		WD PA	50	----	
Whelan, Francis C.		CD CA	57	----	Sr.Stat.
Zampano, Robert C.		D CT	35	----	Sr.Stat.
** APT. YR. 1966					
Robinson, Spottswood W.	*	DC Cir.	50	----	D DC '64 /age 48
** APT. YR. 1977					
Higginbotham, A. Leon	*	3d Cir.	49	----	ED PA '64/age 36
** APT. YR. 1986					
Anderson, Joe F.		D SC	37	----	
Boggs, Danny J.		6th Cir.	42	----	
Brown, Garrett, E.		D NJ	43	----	
Bryan, Robert J.		WD WA	52	----	
Cedarbaum, Miriam G.		SD NY	57	----	
Cholakis, Con. G.		ND NY	56	----	
Conmy, Patrick A.		D ND	52	----	Chf.Jdg.
Conway, John E.		D NM	52	----	
Davies, John G.		CD CA	57	----	
Dearie, Raymond J.		ED NY	42	----	
Dubina, Joel F.		MD AL	39	----	
Duggan, Patrick J.		ED MI	53	----	
Edmondson, J.L.		11th Cir.	39	----	
Fawsett, Patricia C.		MD FL	43	----	
Fitzpatrick, Duross		MD GE	52	----	
Fitzwater, Sidney A.		ND TX	33	----	
Gex, Walter, J.		SD MI	47	----	
Ginsburg, Douglas H.		DC Cir.	40	----	
Graham, James, L.		SD OH	47	----	
Hackett, Barbara K.		ED MI	58	----	
Hansen, David R.		ND IA	48	----	
Henderson, Karen L.		D SC	42	----	
Hittner, David		SD TX	47	----	
Howard, Alex T.		SD AL	62	----	
Jensen, D. Lowell		ND CA	58	----	
Johnson, Alan B.		D WY	47	----	

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JUDGES APPOINTED IN 1964, 1986, 1987 (original and elevated)

NAME		COURT	AGE	DIED	NOTES
Kleinfeld, Andrew J.		D AK	41	----	
Kosik, Edwin M.		MD PA	61	----	
Lagueux, Ronald R.		D RI	55	----	
Letts, J. Spencer		CD CA	52	----	
Magill, Frank J.		8th Cir.	59	----	
Mahoney, J. Daniel		2d Cir.	55	----	
Manion, Daniel A.		7th Cir.	44	----	
McAvoy, Thomas J.		ND NY	48	----	
McQuade, Richard B.		ND OH	46	----	
Norris, Alan E.		6th Cir.	51	----	
O'Scannlain, Diarmuid F.		9th Cir.	49	----	
Ryskamp, Kenneth L.		SD FL	51	----	
Simpson, Charles R.		WD KY	41	----	
Smalkin, Frederic N.		D MD	40	----	
Spencer, James R.		ED VA	37	----	
Stiehl, William D.		SD IL	61	----	
Wilkins, William W.	*	4th Cir.	44	----	D SC '81 /age 39
Williams, Stephen, F.		DC Cir.	50	----	
Woodlock, Douglas P.		D MA	39	----	
Zatkoff, Lawrence P.		ED MI	47	----	
** APT. YR. 1987					
Alesia, James H.		ND IL	53	----	
Bell, Robert Holmes		WD MI	43	----	
Conboy, Kenneth		SD NY	49	----	
Cowen, Robert E.	*	3d Cir.	57	----	D NJ '85 /age 55
Cummings, Sam R.		ND TX	43	----	
Daronco, Richard J.		SD NY	56	1988	shot
Doty, David S.		D MN	58	----	
Dwyer, William L.		WD WA	58	----	
Ellis, T.S.		ED VA	47	----	
Gawthrop, Robert S.		ED PA	45	----	
Greenberg, Morton I.		3d Cir.	54	----	
Hutchinson, William D.		3d Cir.	55	----	
Kanne, Michael S.	*	7th Cir.	49	----	ND IN '82/age 44
Kelly, Robert F.		ED PA	52	----	
Larimer, David G.		WD NY	43	----	
Leavy, Edward	*	9th Cir.	58	----	D OR '84 /age 55
Lew, Ronald S.		CD CA	46	----	
Marsh, Malcolm F.		D OR	59	----	
Mayer, Haldane R.	*	Fed. Cir.	46	----	Cl.Ct.'82/age 41
McKinney, Larry J.		SD IN	43	----	
Parker, James A.		D NM	50	----	
Phillips, Layn R.		WD OK	35	----	
Pro, Philip M.		D NV	41	----	
Raggi, Reena		ED NY	36	----	
Scirica, Anthony J.	*	3d Cir.	47	----	ED PA '84/age 44
Selya, Bruce M.	*	1st Cir.	53	----	D RI '82 /age 48
Sentelle, David B.	*	DC Cir.	44	----	WD NC '85/age 42
Smith, George C.		SD OH	52	----	
Smith, Jerry E.		5th Cir.	41	----	

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JUDGES APPOINTED IN 1964, 1986, 1987 (original and elevated)

NAME	COURT	AGE	DIED	NOTES
Stadtmueller, J.P.	ED WI	45	----	
Standish, William L.	WD PA	57	----	
Tinder, John D.	SD IN	37	----	
Van Antwerpen, Franklin	ED PA	46	----	
Whipple, Dean	WD MO	49	----	
Wolin, Alfred M.	D NJ	55	----	
Wolle, Charles R.	SD IA	52	----	
Zagel, James B.	ND IL	46	----	

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EASTERN DISTRICT OF PENN. - APPOINTMENTS 1946 - 1964 (TOTAL 15)

	< 45	45 >	50 >	60 >
Gross	3	12	9	1
Percentage	20	80	60	7

ALL U.S. DISTRICT / CIRCUIT JUDGES - APPOINTMENTS 1964 (TOTAL 18)

	< 45	45 >	50 >	60 >
Gross	3	15	8	1
Percentage	16	83	44	5

ALL U.S. DISTRICT / CIRCUIT JUDGES - APPOINTMENTS 1986 (TOTAL 46)

	< 45	45 >	50 >	60 >
Gross	17	29	19	3
Percentage	37	63	41	6

ALL U.S. DISTRICT / CIRCUIT JUDGES - APPOINTMENTS 1987 (TOTAL 37)

	< 45	45 >	50 >	60 >
Gross	10	25	15	0
Percentage	27	67	40	0

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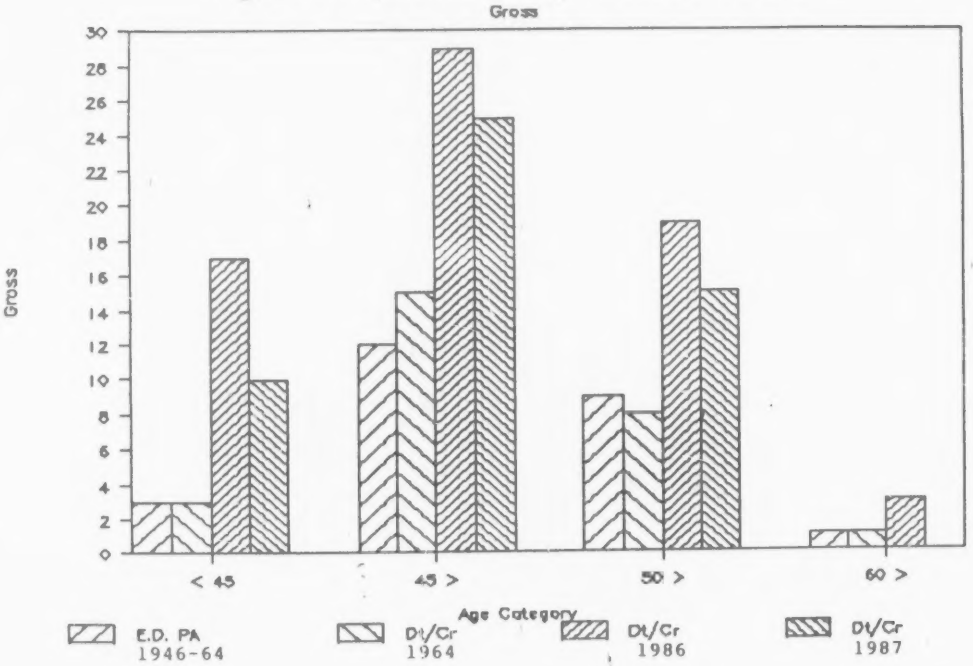
B6

Age Comparisons by Select Years



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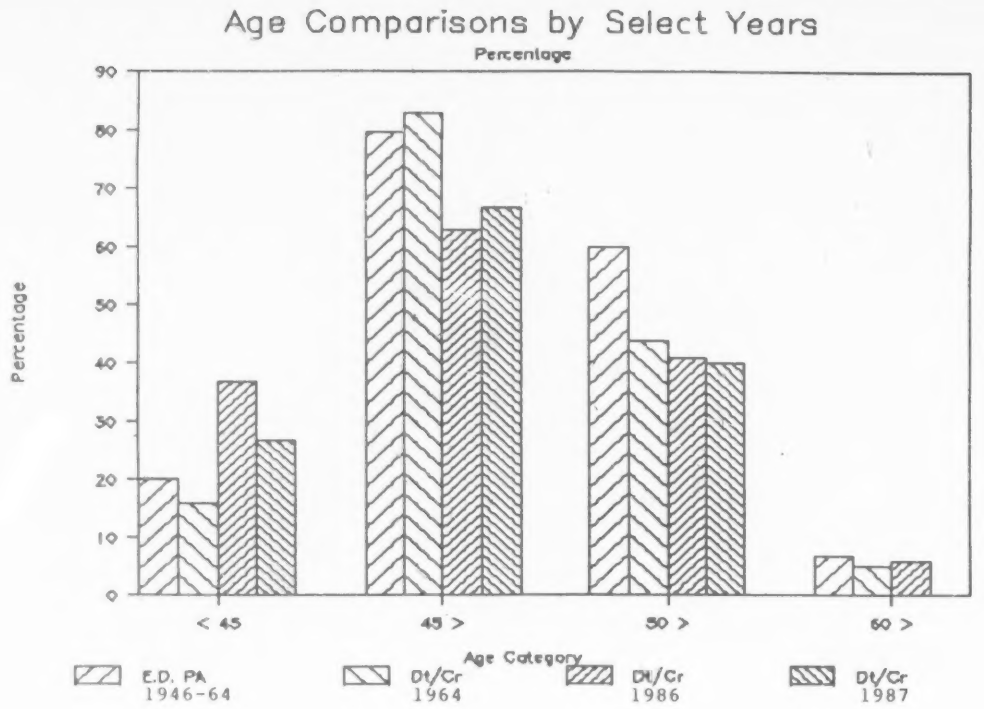

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ADDENDUM C

Questions to Chief Judges of the District Court and to all active Judges of the Court of Appeals for the Third Circuit. From Judge A. Leon Higginbotham, Jr.

Judge _____

1. First Federal Court Appointed to: _____
2. Year appointed: _____
3. Ages of children when appointed to court:

   _____

4. After appointment to bench:

   A. How many children went to public schools? _____

   B. To independent parochial or private school? _____

   C. To college or graduate school? _____

5. What was the largest amount you spent any one year for your children's education costs? _____

   And what percentage was it of your net, judicial income?

   _____

(Note: There will be no reference to any individual judge -- this data is sought to point out to the commission that education costs have been a problem.)

ADDENDUM D

Although my data is, admittedly, anecdotal, I thought that a comparison of the increase in education costs at two institutions in Philadelphia -- where my own children have attended school -- might be relevant. I have compared the educational expenses for the years 1969 and 1988, and noted the decline in real consumer purchasing power of federal judicial salaries over that same period.

University of Pennsylvania

Year	Tuition	CPI[1]	% Actual Incr.
1969	$2,350	xxx	xxx
1988-89	$12,750	$7,398.87 (214%)	442.5%

Germantown Friends School

Year	Tuition	CPI	% Actual Incr.
1969	$1,475	xxx	xxx
1988-89	$7,235$	4,643.96 (215%)	390.5%

To reflect more accurately the change in actual consumer power for members of the federal judiciary, the amounts in the last column should be increased by 30 (472.5% and 420.5%) to account for the 30% decline in consumer purchasing power of the federal judicial salary indicated on Chart E in Simple Fairness.

---

1. The figures are based upon the Consumer Price Index ("CPI") -- Major Expenditure Class -- from the Economic Report of the President, February 1988, published by the Dept. of Labor, Bureau of Labor Statistics. The rate used is that given by the report for the quarter ending in December 1987.

The CPI rates reflect a base year of 1967, and the figures generated under this column indicate, in terms of actual dollars spent in 1988, what the tuition costs would be if they had increased only as much as the inflation rate as measured by the CPI. The figures in parenthesis indicate the percentage of that increase.

STATEMENT OF SENATOR LARRY PRESSLER
before the
COMMITTEE ON GOVERNMENTAL AFFAIRS
February 1, 1989

I want to thank the Committee members for giving me this opportunity to testify. I am opposed to the President's pay recommendations for members of Congress, senior federal officers, and federal judges and believe the Senate and House should vote on this matter. Since first coming to Congress in 1975, I have argued the need for a recorded vote on Congressional pay raises. This is not a new issue and there is no need for extended discussion on this matter. Therefore, I will keep my remarks brief.

The proposed pay raises should be defeated. We must start chopping down the projected $146 billion deficit for this year, and there is no better place to begin. Regardless of the pay raise proponents' argument that the increases are budget neutral, public opinion would be more supportive of our budget cutting efforts if we started the process by rejecting these pay raises. How can we expect others to make sacrifices if we allow these pay raises to go forward?

More important, these pay raises should be subject to a vote. As the Committee members know, my good friend Senator Grassley and I, along with a bipartisan group of twenty-seven other Senators, have introduced a proposal to not only disapprove these pay raises, but also rescind the pay raises upon enactment of our resolution, regardless of whether it is passes after the thirty-day deadline. Additionally, it would require a recorded vote on all future Congressional pay raises.

The leaders in the House have announced that they do not plan to permit a vote on this issue before the thirty-day deadline. Therefore, the second provision is the key component of our Senate resolution. It would rescind the pay raises even after the February deadline. Thus, it would keep this issue alive well after February 7. It would give the American people time to put sufficient pressure on the House leadership to produce a meaningful vote on this issue in the House.

Automatic Congressional pay increases are bad public policy. The American people deserve a forthright, candid, up-or-down vote on Congressional pay. This resolution ensures that the House will have a chance to vote to rescind the pay raises and would permanently do away with automatic Congressional salary increases.

I believe that our three-part proposal is the best legislative vehicle to put pressure on the House to vote. Because the House does not plan to vote on this issue before February 8, a vote in the Senate on a resolution to simply disapprove the pay raises would be meaningless. Our proposal includes a provision to rescind the pay raises. Thus, a vote after February 7 will count. So this time, even a vote after the deadline will have teeth--in contrast to the meaningless vote by the House of Representatives the last time Congress sneaked through a pay raise.

Many already believe, with justifiable skepticism, that the pay raises will go forward. From past years, they have seen that a simple resolution to disapprove the increases before the thirty-day deadline has little chance for success. If the Senate is sincere in its efforts to defeat these pay raises, it should vote on our resolution.

Thank you.

STATEMENT OF SENATOR CHARLES GRASSLEY
TO THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
REGARDING RECOMMENDATIONS OF THE QUADRENNIAL COMMISSION
ON GOVERNMENTAL SALARIES

FEBRUARY 1, 1989

Thank you, Mr. Chairman.

I am here today to discuss the recommendations of the Commission on Executive, Legislative, and Judicial Salaries and how I think Congress should respond to those recommendations. As you know, the recommendations were endorsed by President Reagan and forwarded to the Congress with his budget recommendations on January 9, 1989. According to statute, the pay increase will automatically go into effect unless Congress specifically rejects it by midnight on February 7th.

My testimony addresses several components of this issue: the pay raise itself, the process by which the raise is enacted, and recommendations for congressional response.

THE PAY RAISE

I oppose this pay raise and I emphatically believe that Congress should reject it. More importantly, at least 85% of the American public opposes it. It is unconscionable for the 101st Congress to have as its first action the approval of salary increases of at least 50% for itself and other elite members of federal government.

As we begin this new Congress, there is almost unanimous agreement that reduction of the budget deficit must be our first priority. I simply cannot understand how any of us could tell our constituents to accept cuts in the government services on which they depend after we have given ourselves a massive increase in pay. Those two messages are simply and completely out of sync. It's been my opinion, as I've said several times, that Congress will deserve a pay raise in 1992 or 1993, when we have balanced the federal budget.

Most of the Iowans from whom I've received letters and calls consider the proposed pay raise a slap in their faces. Citizens who depend of government services and government benefits, such as social security recipients and homeless individuals, cannot understand, nor can I, how we could give ourselves a pay increase that is larger than most of them could

hope to earn in a year. They will not understand why we can't make it on $90,000 a year, plus fringe benefits, when they are "making it" on less than $30,000 and no fringe benefits. In order to let our constituents know that we're still "in touch," this pay raise must be rejected.

Advocates of the pay raise like to use 1969 as the bench mark year with which to compare present salaries. Interestingly, 1969 is the year in which Congress was paid the highest salary ever, in terms of constant dollars. That year, Congress received a 40% increase, the highest pay increase ever received. In constant dollars, the pay in that year would be comparable to $137,021. Other salary levels could be used as benchmarks, however, that may be just as relevant. For example, the average salary for the 20th century, in constant dollars, was $81,802.

Advocates of the pay raise also contend that a sharp increase is necessary in order to reward those people in government who make significant decisions on public policy. I believe, however, that public service is a privilege and honor, which carries with it immense responsiblity as well as great reward, and thus sometimes requires personal sacrifice. I hope that candidates for elective and appointive office do not seek the position for its high pay, but rather for the contributions they hope to make to the citizenry.

I do not understand how it can be argued that lack of adequate wages discourages candidates from running for office or from staying in office. In fact, candidates routinely spend millions of dollars in order to get this job, despite the supposedly "low" wage that goes with it. Retiring members of Congress more frequently mention the rise of constituent demands and the corresponding workload as the reasons for departure, not the lack of adequate compensation.

This situation is evident in the higher rate of incumbency in the Congress. In the last three elections, according to Congressional Quarterly, the average number of vacancies due to retirement decreased by 16 in the House and by 2 in the Senate, in relation to the previous three elections. The freshman class of the 101st Congress is composed of only 11 new senators and 33 new representatives, the smallest class in the history of Congress.

THE PAY PROCESS

Last week, we were informed that the House of Representatives would not be in session to conduct business until February 9th, two days after the automatic pay raise goes into effect. Though the Senate has not been so blatant as to adjourned for several weeks, Members of this body have only six working days in which to act on the proposed pay increased.

The distinguished majority leader has promised a vote before the 30 day time period expires, which I appreciate. But it is inadequate to allow Senators to simply express their sentiments on the issue, without also the opportunity to keep the raise from going into effect. This situation makes a mockery of the representative government in which we all participate. Taking votes that are too late to be meaningful or avoiding votes altogether is not what representative democracy is about.

It has often been discussed that the framers of this government specified that the Congress should indeed vote on its salaries. Even so, I'd like to quote from Patrick Henry's debate at the Virginia convention regarding the makeup of our government:

> "...The pay of the members is, by the constitution, to be fixed by themselves, without limitation or restraint. They may therefore indulge themselves in the fullest extent. They may make their compensation as high as they please. I suppose, if they be good men, their own delicacy will lead them to be satisfied with moderate salaries. But there is no security for this, should they be otherwise inclined."

If this were the process today, Congress could simply vote on the proposal put forth by the Quadrennial Commission, and the voters back home would decide whether or not the level of pay is appropriate. It has been said that a vote for a salary increase is an invitation for your next opponent's 30 second commercial. I believe, however, members would instead be encouraged to work harder to show their constituents that they are worth the pay increase.

Being on record on crucial matters, such as the pay raise, is the very essence of accountability. With the present process, many constituents wonder who is serving who, Are they working to pay our salaries - the salaries we sneak through? Or are we working to serve their needs and concerns, and take responsiblity for the decisions we make, including that of our own pay.

The need for a vote is even more critical, considering the makeup of the Commission of Executive, Legislative, and Judicial Salaries. The members of the commission are appointed by the people who have the most to gain from recommendations for big salary increases. There is not even an attempt to represent the interests of the common voter who will have to pay for the increase.

RECOMMENDATIONS FOR CONGRESS'S RESPONSE TO QUAD REPORT

Senator Pressler and I, along with 27 cosponsors, have introduced legislation that would resolve the dilemma facing Congress. The support for this legislation is completely balanced. There are 15 Republicans and 14 Democrats; there is fair representation among members just elected and those up for election, there is even distribution around the country. With this kind of support, the bill is obviously good and sound policy.

The bill has three components. The first disapproves the recommendations of the Quadrennial Commission. Though this section, unfortunately, will not have an effect on this pay raise, since the House is not going to let its members vote, it will clearly and simply state to the public that the Senate disagrees.

The second section of the bill is much more significant. More than just stating that the Senate disapproves of the pay raise, this section will rescind it. This will go into effect for all subsequent pay periods after this joint resolution is enacted. It is the only one introduced in the Senate, of which I am aware, that will have any effect after midnight on February 7th. This resolution is the only legislation before the Senate which will communicate to the American public that the Senate's vote of disapproval is really meaningful.

The third section of the bill is perhaps the most important. It, too, is simple, but will greatly reform the congressional pay process. By requiring a roll call vote for all future pay raises, the Senate will once and for all eliminate this charade we now go through every four years.

Mr. Chairman, thank you for this opportunity to express my thoughts and concerns on this critical matter. I hope your committee will expedite the consideration of this legislation so that the Senate can express its will to the American public.

STATEMENT OF SENATOR GORDON J. HUMPHREY
ON THE PROPOSED CONGRESSIONAL PAY RAISE
FEBRUARY 1, 1989

THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

THIS IS ALL QUITE AN INTERESTING LESSON IN CIVICS, AND I WONDER WHAT OUR YOUNG PEOPLE THINK OF IT. WE KNOW WHAT ADULTS THINK OF IT. BACK HOME THIS WEEKEND, I WAS ACCOSTED EVERYWHERE I WENT ABOUT THE PAY RAISE. EVEN IN CHURCH! PEOPLE DON'T WAIT TO BE ASKED, THEY TELL YOU RIGHT OUT THEY ARE INCENSED BY IT ALL. BUT WHAT WORRIES ME MOST IS, WHAT OUR YOUNG PEOPLE MUST THINK.

IN CIVICS CLASS OUR YOUTH ARE TAUGHT ABOUT THE SIGNERS OF THE DECLARATION OF INDEPENDENCE, WHO PLEDGED THEIR FORTUNES AND SACRED HONOR TO CREATE THIS SPECIAL NATION OF OURS AND. THEY ARE TAUGHT MOST OF THE SIGNERS, IN FACT, LOST THEIR FORTUNES BUT NOT THEIR HONOR. MOST AMERICANS BELIEVE WE, FOR OUR PART, HAVE LOST OUR HONOR IN SEEKING A FORTUNE -- AND IF YOU COUNT PENSION BENEFITS, WE ARE TALKING ABOUT WHAT MOST AMERICANS COUNT AS A FORTUNE.

IN CIVICS CLASS OUR YOUTH ARE TAUGHT THAT FOUNDING FATHERS DESIGNED CHECKS AND BALANCES INTO OUR GOVERNMENT IN ORDER REIGN IN HUMAN NATURE. THEY ARE TAUGHT THAT RESPONSIBILITY AND ACCOUNTABILITY ARE CENTRAL TO OUR SYSTEM OF GOVERNMENT. WE IN CONGRESS ARE BIG ON ACCOUNTABILITY. WE REGULARLY HAUL UP BEFORE OUR COMMITTEES BIGWIGS AND LITTLEWIGS ALIKE FROM THE EXECUTIVE BRANCH AND MAKE THEM ACCOUNT TO US FOR THEIR ACTIONS. THAT IS AS IT SHOULD BE, BECAUSE WE ARE CHARGED WITH OVERSIGHT RESPONSIBILITY. WE HAUL IN CABINET SECRETARIES, WE GLOWER DOWN AT THEM FROM OUR HIGH PERCHES. WE LOVE TO MAKE THEM SQUIRM AND WE LOVE TO MAKE THEM SWEAT, ESPECIALLY IN FRONT OF TELEVISION CAMERAS. YES, SIR, WE ARE ALL FOR ACCOUNTABILITY.

ACCOUNTABILITY IS IMPORTANT. IT'S THE GLUE THAT HOLDS OUR SYSTEM TOGETHER. AND, WE IN CONGRESS ARE ALL FOR IT, AREN'T WE? WELL, NOT QUITE. NOT WHEN ACCOUNTABILITY APPLIES TO US. WE HAVE DEVISED IN A SYSTEM UNDER WHICH PAY RAISES ARE AUTOMATIC, IF CAN AVOID A VOTE BEFORE THE DEADLINE. WHAT A PERFECT SYSTEM FOR EVADING ACCOUNTABILITY. WE GET THE DOUGH AND LEAVE NO FOOTPRINTS FOR THE VOTERS TO FOLLOW AT ELECTION TIME.

THERE'S A CERTAIN EVIL GENIUS ABOUT THE SCHEME. AND IT IS EVIL, BECAUSE NOT ONLY DOES IT DESTROY ACCOUNTABILITY IN

AN IMPORTANT AREA, IT ALSO DESTROYS WHATEVER SHRED OF RESPECT REMAINS FOR THIS INSTITUTION AMONG THE AMERICAN PEOPLE. BY NOW, MOST ADULTS ARE TURNED OFF TO THE CONGRESS. BUT THINK OF WHAT WE ARE DOING TO OUR YOUTH. WHAT MUST THEY THINK OF US, WHEN WE RUN FROM ACCOUNTABILITY, AS COCKROACHES RUN FROM BRIGHT LIGHT?

THERE WILL BE NO VOTES IN THE HOUSE UNTIL FEBRUARY 9. SHAME ON US. SHAME ON THE CONGRESS. NOT JUST FOR THE 50% PAY RAISE. SHAME ON US FOR FOR IRRESPONSIBILITY. SHAME ON US FOR EVADING THE SYSTEM OF CHECKS AND BALANCES. MOST OF ALL, SHAME ON US FOR SETTING SUCH A POOR EXAMPLE FOR OUR YOUTH. SHAME ON US FOR DISILLUSIONING OUR IDEALISTIC YOUNG PEOPLE. IT GROWS EVER HARDER FOR PARENTS TO TEACH PATRIOTISM AND VIRTUE, WHEN THOSE IN GOVERNMENT SET SO POOR AN EXAMPLE. SHAME ON US.

THE WORDS OF ARTICLE I, SECTION 6 OF THE CONSTITUTION COULD NOT BE CLEARER: "THE SENATORS AND REPRESENTATIVES SHALL RECEIVE A COMPENSATION FOR THEIR SERVICES, TO BE ASCERTAINED BY LAW, AND PAID OUT OF THE TREASURY OF THE UNITED STATES."

THIS PROVISION WAS CONTRCVERSIAL FROM THE START, SINCE CRITICS FELT IT GAVE MEMBERS OF CONGRESS A LICENSE TO STEAL FROM THE TAXPAYERS. BUT ITS AUTHOR, GOUVERNEUR MORRIS, INSISTED "[THERE] COULD BE NO REASON TO FEAR THAT THEY WOULD OVERPAY THEMSELVES." MEANING, OF COURSE, THAT THERE COULD BE NO REASON TO FEAR GREED ON THE PART OF MEMBERS, SINCE PAY RAISES COULD BE SECURED ONLY BY ENACTING LAW, A LAW COULD ONLY BE ENACTED IF A MAJORITY OF THOSE IN BOTH HOUSES VOTED FOR IT, AND THE CITIZENS COULD HOLD MEMBERS ACCOUNTABLE AT THE NEXT ELECTION.

THE DEBATE AT THE RATIFYING CONVENTIONS ALSO MAKES CLEAR THE INTENT OF THE ASCERTAINMENT CLAUSE WAS TO PROVIDE A CHECK AGAINST HUMAN NATURE. AT THE VIRGINIA CONVENTION, PATRICK HENRY WORRIED ABOUT GIVING MEMBERS DISCRETION OVER THEIR OWN PAY.

> "MR. HENRY. ...THE PAY OF THE MEMBERS IS, BY THE CONSTITUTION, <u>TO BE FIXED BY THEMSELVES</u>, WITHOUT LIMITATION OR RESTRAINT...
>
> MR. MADISON. ...THIS IS A POWER WHICH CANNOT BE ABUSED WITHOUT ROUSING UNIVERSAL ATTENTION AND INDIGNATION... SHOULD THE GENERAL CONGRESS ANNEX WAGES DISPROPORTIONATE TO THEIR SERVICE, OR REPUGNANT TO THE SENSE OF THE COMMUNITY, THEY WOULD BE UNIVERSALLY EXECRATED. THE CERTAINTY OF INCURRING THE GENERAL DETESTATION OF THE PEOPLE WILL PREVENT ABUSE."

SIMILARLY, A COLLOQUY DURING THE MASSACHUSETTS RATIFYING CONVENTION MAKES CLEAR THE DELIBERATE INTENTION OF THE FRAMERS WITH REGARD TO CONGRESSIONAL PAY:

> "DR. TAYLOR. MR. PRESIDENT, IT HAS HITHERTO BEEN CUSTOMARY FOR THE GENTLEMEN OF CONGRESS TO BE PAID BY THE SEVERAL STATE LEGISLATURES OUT OF THE STATE TREASURY. AS NO STATE HAS HITHERTO FAILED PAYING ITS DELEGATES, WHY SHOULD WE LEAVE THE GOOD OLD PATH?
>
> HON. MR. SEDGWICK. HOPED GENTLEMEN WOULD CONSIDER THAT THE FEDERAL OFFICERS OF GOVERNMENT WOULD BE RESPONSIBLE FOR THEIR CONDUCT; AND, AS THEY WOULD REGARD THEIR REPUTATIONS, WILL NOT ASSESS EXORBITANT WAGES.... CAN A MAN, HE ASK, WHO HAS THE LEAST RESPECT FOR THE GOOD OPINION OF HIS FELLOW-COUNTRYMEN, GO HOME TO HIS CONSTITUENTS, AFTER HAVING ROBBED THEM BY VOTING HIMSELF AN EXORBITANT SALARY? ...THEREFORE, CONCLUDED THE HONORABLE GENTLEMAN, IF LEFT TO THEMSELVES TO PROVIDE FOR THEIR OWN PAYMENT, AS LONG AS THEY WISH FOR THE GOOD OPINION OF MANKIND, THEY WILL ASSESS NO MORE THAN THEY REALLY DESERVE, AS A COMPENSATION FOR THEIR SERVICES."

OBVIOUSLY, MADISON AND SEDGWICK UNDERESTIMATED THE CLEVERNESS AND THE GREED OF THE 100TH AND 101ST CONGRESSES. I JOIN WITH SEDGWICK IN CALLING IT ROBBERY. IT IS STEALING. WHEN ONE TAKES SOMETHING BY STEALTH, IT IS STEALING. A PAY RAISE WITHOUT A VOTE IN BOTH HOUSES -- A TIMELY VOTE -- IS STEALING. SUCH STEALTH, SUCH STEALING DOES DAMAGE TO PUBLIC TRUST FAR BEYOND THE FISCAL COSTS OF THE PAY RAISE. THAT IS ITS GREATEST COST.

FOR NEARLY TWO CENTURIES, CONGRESS UPHELD THE INTENT OF THE FRAMERS. BUT IN 1967, CONGRESS CREATED THE "QUADRENNIAL COMMISSION" WHOSE RECOMMENDATION COULD BE DISAPPROVED BY EITHER HOUSE OF CONGRESS. THE RECOMMENDATIONS OF THE COMMISSION WOULD BE PRESENTED TO THE PRESIDENT, WHO UPON RECEIPT, WOULD SEND TO THE CONGRESS HIS RECOMMENDATIONS.

UNLIKE THE PRESENT SYSTEM, HOWEVER, THE 1967 LAW PROVIDED THAT THE PRESIDENT'S RECOMMENDATIONS WOULD BECOME EFFECTIVE AFTER THIRTY DAYS UNLESS <u>EITHER</u> HOUSE OF CONGRESS ENACTED A RESOLUTION OF DISAPPROVAL OR CONGRESS ENACTED A STATUTE WHICH ESTABLISHES DIFFERENT RATES OF PAY.

THIS CONCEPT WAS NOT WITHOUT CONTROVERSY AT THE TIME. THE SENATE REPORT ON AN EARLY VERSION OF THE LEGISLATION STATED:

> "THE COMMITTEE IS UNANIMOUSLY OPPOSED TO ANY LEGISLATIVE PROPOSAL WHICH WOULD VEST IN THE EXECUTIVE BRANCH THE AUTHORITY TO ESTABLISH, AFFIRMATIVELY OR NEGATIVELY, THE SALARIES OF MEMBERS OF CONGRESS. WHAT WE PAY OURSELVES IS A CONSTITUTIONAL RESPONSIBILITY VESTED IN US AND TO

BE EXERCISED BY US. TO SHIRK THAT POSITIVE DUTY BY HANDING THE RESPONSIBILITY TO THE PRESIDENT, A SALARY COMMISSION, OR ANY OTHER PERSON OR GROUP, AND THEN ALLOWING HIS OR THEIR RECOMMENDATIONS TO TAKE EFFECT IS AN ABDICATION OF CONSTITUTIONAL RESPONSIBILITY..."

THE PRESIDENT ALWAYS HAS THE RIGHT TO APPOINT COMMISSIONS OR ADVISORY BOARDS TO MAKE STUDIES OF SALARY AND FRINGE BENEFITS PAID TO FEDERAL EMPLOYEES AND TO MAKE RECOMMENDATIONS TO HIM AS TO PROPER RATES OF COMPENSATION, WHICH HE MAY SUBMIT TO CONGRESS IF HE WISHES. BUT NO AMOUNT OF ADVICE OR COUNSEL CAN REMOVE FROM THE CONGRESS THE DUTY TO LEGISLATE."

INDEED, IT WAS ONLY AFTER A CONFERENCE WITH THE HOUSE AND THE INCLUSION OF LANGUAGE ASSURING A ONE HOUSE VETO OF THE PRESIDENT'S RECOMMENDATIONS THAT THE SENATE AGREED TO THE 1967 LEGISLATION. SENATOR MIKE MONRONEY, CHAIRMAN OF THE COMMITTEE ON POST OFFICE AND THE CIVIL SERVICE, IN PRESENTING THE CONFERENCE REPORT TO THE SENATE TOOK CARE TO SUGGEST THAT THE ONE HOUSE VETO WAS CONSISTENT WITH CONGRESS' RESPONSIBILITIES AND THE PRINCIPLES EXPRESSED IN THE COMMITTEE REPORT:

"IF THE [SENATE] DOES NOT LIKE [THE SALARIES RECOMMENDED BY THE PRESIDENT], A MAJORITY OF ONE IN EITHER BODY CAN VETO THAT PLAN AND CONGRESS CAN FIX THOSE SALARIES LEGISLATIVELY. WE HAVE NOT SURRENDERED ANY POWER. WE HAVE THE RIGHT TO EXERCISE THAT POWER WHENEVER SUCH A PLAN DOES NOT MEET THE CONSENSUS OF THE MAJORITY OF ONE IN EITHER HOUSE.

EITHER HOUSE BY A MAJORITY OF ONE, CAN REJECT OR MODIFY THE PLAN. SO THE POWER RESTS WITH THE CONGRESSIONAL BRANCH."

THOUGH THE PROCEDURE OF THE 1967 LAW, IN MY VIEW, STRAYED FROM THE SPIRIT OF THE CONSTITUTION, AT LEAST CONGRESS UPHELD ITS RESPONSIBILITY AND VOTED. FOR INSTANCE, IN 1974, PRESIDENT NIXON PROPOSED A 22 PERCENT PAY INCREASE FOR MEMBERS. THE SENATE, ACTING ALONE, REJECTED THE PAY INCREASE AND IT DID NOT GO INTO EFFECT.

TEN YEARS LATER, CONGRESS BEEFED UP THE 1967 ACT TO PROTECT AGAINST PAY RAISES WHICH HAD NOT BEEN SPECIFICALLY APPROVED. IN 1977, CONGRESS REQUIRED THAT THE PRESIDENT'S RECOMMENDATIONS WOULD NOT BECOME LAW UNLESS AFFIRMATIVELY APPROVED BY A ROLL CALL VOTE IN BOTH HOUSES OF CONGRESS WITHIN 60 DAYS OF THEIR TRANSMITTAL. IT WAS CLEAR FROM THE SPONSOR OF THE LEGISLATION, SENATOR DEWEY BARTLETT, THAT CONGRESS WAS ATTEMPTING TO MOVE IN CLOSER CONFORMITY TO THE CONSTITUTION:

"ON VIRTUALLY EVER OTHER TYPE OF QUESTION TO COME BEFORE THE SENATE WE TAKE A POSITION. BUT ON PAY INCREASES FOR OURSELVES AND OTHERS, WE DO NOT. IT IS THE SAME FOLKS WHO PAY THE BILLS IN WITHER CASE. IT SEEMS TO ME THAT THE SAME PROCEDURE SHOULD APPLY."

IT WAS IN 1985 THAT THE PRESENT SYSTEM ESTABLISHING THE AUTOMATIC APPROVAL MECHANISM WAS ENACTED INTO LAW. IT IS WORTH NOTING THAT THE PROVISION HAD AN INAUSPICIOUS BIRTH: IT WAS INCLUDED IN THE MASSIVE FY86 CONTINUING RESOLUTION (PL 99-190) WITHOUT COMMITTEE CONSIDERATION, FLOOR DEBATE, OR RECORD VOTE IN EITHER HOUSE.

THE FIRST GO-ROUND UNDER THE NEW SYSTEM, IN 1987, HAS OF COURSE, GONE DOWN IN CONGRESSIONAL INFAMY. THE SPECTACLE OF THE HOUSE VOTING ONE DAY AFTER THE THIRTY DAY DEADLINE HAD EXPIRED BROUGHT SHAME ON THE ENTIRE CONGRESS. HAVING GOTTEN AWAY WITH THAT, THE HOUSE IN NOW EMBOLDENED TO DISSOLVE INTO PRO FORMA SESSION UNTIL THE DEADLINE PASSES. EXCESS, WITHOUT CHECKS AND BALANCES, BREEDS EXCESS.

CLEARLY THE LAW MUST BE CHANGED TO RESTORE ACCOUNTABILITY, DECENCY AND HONOR. THERE MUST BE VOTES. BUT SOME SAY, CONGRESS WILL NEVER BE ABLE TO PAY ITSELF ADEQUATELY IF WE RETURN TO THE OLD SYSTEM. ADEQUATE IN WHOSE, EYES, MR. CHAIRMAN. WE ALL KNOW THE SALARY AT THE TIME WE RUN FOR ELECTION. PUBLIC SERVICE IS SUPPOSED TO BE THAT, PUBLIC SERVICE; NOT SELF-SERVICE. IT IS SAID THAT TOO FEW TALENTED PEOPLE WILL RUN FOR OFFICE. IT'S POSSIBLE SOME DECIDE NOT TO RUN FOR OFFICE BECAUSE THEY VIEW CONGRESS AS A CESSPOOL AND DON'T WISH TO DESCEND INTO IT. CERTAINLY, THE CONDUCT OF THE CONGRESS IN THIS MATTER DOESN'T ADD ANY PERFUME TO THE STENCH. THE LAW MUST BE CHANGED. WE NEED TO RESTORE HONEST ACCOUNTABILITY.

AND, IN THE MEANTIME, THE PAYRAISE MUST BE REPEALED. MANY OF US ARE INTENT ON JUST THAT COURSE OF ACTION. THE HOUSE CAN HIDE UNTIL FEBRUARY 9TH, IF IT WISHES, BUT THE HOUSE CANNOT HIDE FOREVER. THIS STORM WILL NOT BLOW OVER. SOONER OR LATER, THE HOUSE WILL HAVE TO VOTE ON REPEAL OF THE PAY RAISE. WE ARE INTENT UPON IT. MR. CHAIRMAN, LET US ALL GIVE OUR YOUNG PEOPLE A MODERN DAY LESSON IN CIVICS. LET US SHOW THEM WE HAVE THE COURAGE TO ADMIT A MISTAKE. LET US RESTORE AN HONORABLE SYSTEM FOR SETTING THE PAY OF MEMBERS OF CONGRESS.

TESTIMONY OF THE HONORABLE JESSE HELMS

MR. HELMS: Mr. Chairman, a pay increase for Members of Congress is one of the most controversial issues we face -- and rightly so. The vast majority of Americans who will be taxed to pay for this increase make nowhere near as much money as their Senator or Congressman. Furthermore, there's not a Member of Congress who did not know, when he or she ran for office, what the pay would be. The same goes for every other elected and appointed official.

Mr. Chairman, everybody in this country is going to have to sacrifice to some extent if we are to get this country's fiscal affairs straightened out. It ought to start with, and in, Congress. We must set the example. That is why I have strongly opposed every pay raise proposition that has come before the Senate.

As we all know, because the issue is so controversial, Congress created this system under which Members of Congress and federal workers can get an automatic pay raise without having to vote for it. When their constituents complain, every member can assert that he or she had nothing to do with that pay increase and would never have voted for such a thing. That's a cop-out, Mr. Chairman, and Senator Pressler, Senator Grassley, Senator Humphrey, and I, along with 21 of our colleagues, want to give the Senate an opportunity to vote on the matter. That is the purpose of the first part of S.J. Res. 6, which we introduced on January 25.

Unfortunately, Mr. Chairman, as we all know, the House of Representatives has announced that it will be in pro forma session until after the February 7 deadline for Congress to pass a resolution of disapproval of the proposed pay increase. that has lead many critics to charge that the Senate is merely going through the gestures of opposing the pay increase, confident that it will take effect anyway.

Consequently, the second part of S.J. Res. 6 provides that if the resolution is passed after the deadline, it will take effective retroactively -- except, of course, for federal judges. This means that if the Senate passes S.J. Res. 6 and sends it to the House, they won't be able to avoid the issue simply by saying that the deadline has passed.

Mr. Chairman, Congress was given the Constitutional responsibility to control the nation's purse strings. We must not continue to allow Congress to shirk that responsibility. If Members of Congress are willing to vote themselves a pay raise, fine. I will not vote with them, but they certainly have the right to do so.

It is unconscionable, however, that we can continue to tolerate a system under which Members of Congress and other federal workers can receive a hefty pay raise without even one vote by Congress. Consequently, the third part of S.J. Res. 6 will amend current law to provide that future pay raise recommendations for Members of Congress will not take effect unless both Houses of Congress pass a joint resolution approving the pay increase.

Mr. Chairman, the current system in which the pay raise goes into effect automatically unless Congress votes to disapprove it is a blatant abdication of responsibility and an affront to the American people. They deserve better, and I strongly urge this Committee to report out S.J. Res. 6 promptly so the Senate can pass it expeditiously.

STATEMENT BY RALPH NADER
TO THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS
February 1, 1989

President Reagan's Proposed Salary Increase
for Government Officials and Members of Congress

Mr. Chairman and Members of the Committee:

Few issues have generated the kind of sustained and overwhelming public outcry as the Reagan proposal to increase the pay of Congress and other top government officials by 51 percent, or at least $45,000 a year.

The American people are decisively opposed to a pay raise for Congress. Poll after poll has registered these results, yet the numbers themselves do not tell the whole story. Across the country, radio talk show hosts, who are perhaps closer to the pulse of public opinion than anyone else, report a deluge of calls from listeners expressing shock and disbelief. Our own offices have been swamped with mail from people asking what they can do to stop it, and I would imagine that every member of Congress has heard the message loud and clear directly from his or her own constituents.

Yet Congress has seen fit to ignore the strong feelings of the people who put them in power, by going along with a rigged system that one week from now will provide senators and congressmen with a $45,500 salary increase unless both houses of Congress fail to vote it down. A system more calculated to bring about cynicism and distrust of government would be hard to imagine.

This month one chamber of the Congress has taken its own disregard for public opinion to an extreme. The House of Representatives, shutting down all activity and going into what they euphemistically call "pro forma session," has barricaded itself against any and all calls to debate or vote on the issue. While this shocking action has received little attention from the media, it is probably without precedent in American history -- the House on strike, the House playing hooky until it gets its raise.

Perhaps Congress, in ignoring the will of the people, believes that this is an issue that will go away. If so, they are mistaken, because the proposed increase has struck a deep chord among American voters. The average wage earner, trying to make ends meet on an income one-fifth that of the current level of pay for members of Congress -- apart from benefits and Congressional perks -- cannot understand why Congress ought to have its pay increased. Those making the minimum wage of $3.35 an hour, or $6,700 a year, have more reason to wonder why Congress has not seen fit to sympathize with their struggles, having refused to raise the minimum wage since 1980.

What makes the shutdown of the House even more striking are the results of a survey, completed yesterday by a coalition of citizens groups. It shows that over 60 percent of the members of the House oppose the pay raise proposal, while only 11 percent say that they support it. On Monday, the Speaker of the House initiated his own survey of the House, asking members whether or

not they want to vote on the issue. In the interest of democracy and open government, we ask that members of Congress make public their position on whether or not to have a vote.

Now let us consider the proposal point by point.

The process itself is a travesty of democracy. Members of Congress argue that it is difficult for them to vote on a pay increase for themselves. That argument ignores that the very basis of our system of government is for the people's elected representatives to vote -- on the record -- on every tough issue that comes before them. Specifically, Article 1, Section 6 of the U.S. Constitution states: "The Senators and Representatives shall receive a compensation for their services, to be ascertained by law . . . ."

Instead, Congress and the President have created a commission of highly paid corporate executives and corporate lawyers to raise their pay. It would be astonishing if the members of the Quadrennial Commission were able to comprehend how their proposal to raise Congress' pay to $135,000 looks to the average American, so far removed from the daily life of the ordinary wage earner are the Commission's members.

Moreover, the Commission's members are thriving conflicts of interest themselves. They and their firms have cases before federal judges and bills they support or oppose before members of Congress, from whom they seek favorable decisions. So what are Commission members doing? They are leading the charge to raise the salaries of these very officials.

Why has there never been a single dissenter among the members of this Commission? Why has there never been a minimum wage earner, a school teacher, a farmer, or an auto worker on the panel? Why hasn't the Commission held hearings around the country to receive input from taxpayers?

It is absolutely essential, first of all, to reform this seemy process, to make sure that Congress is accountable for its actions in this area. The Commission must be eliminated, and replaced with a mechanism that returns accountability to the process. Under our Constitution, legislation is enacted only after Congress votes for it and the president signs it into law. To have a legislative salary increase enacted without one or both houses of Congress voting affirmatively for it is an abdication of congressional authority. Not voting should not be added to the advantages of incumbency.

Second, let us turn to the question of whether members of Congress deserve a 51 percent increase in their salary.

The taxpayers owe public officials no more than a decent standard of living. Already, members of Congress and other top officials earn more money than the vast majority of Americans, probably upward of 99 percent. In addition to their salary, they receive a package of benefits, allowances, and perks that would be the envy of anyone outside the charmed circle of the corporate elite. It is safe to say that the distance between the governors and the governed, who pay their salary, is great enough as is, without adding further to public cynicism.

It is also important to point out, among the current benefits for members of Congress, the unseemly practice of cash honoraria paid to senators and representatives by special interest lobbies. There is no doubt that this abuse of the system ought to be banned immediately, along with restrictions on other types of earned income and special interest financial benefits. Yet there is no reason to link an elimination of honoraria to a pay raise. Ending honoraria and reforming the pay raise process are separate reforms, and should remain so.

It is also not true, as the Commission argued, that members of Congress have lost purchasing power over the years. In 1964, members of Congress made $22,500 yearly. In 1968, they made $30,000; in 1982, they made $60,600; and in 1986, they made $75,100. In 1987, members of Congress received a $2,300 cost of living increase and then received a $12,100 pay increase, putting their current pay level at $89,500. According to this accounting, members of Congress have more than kept up with the pace of inflation. In seeking a raise today, perhaps Congress is trying to pace its salary with the growth of U.S. budget deficit rather than the cost of living.

In selecting 1969 as its base year for measuring Congress' pay, the Quadrennial Commission has fostered a statistical trick. In that year, Congress received the largest pay increase to date, which makes any comparison to 1969 subject to a distorted, self-serving measure of the toll of inflation.

Supporters of the pay raise argue that it is necessary to

attract competent people into government, including Congress. Leaving aside this commentary on the present members of Congress, there is absolutely no evidence that Congress is losing good people because of the pay. Only a tiny handful of members of Congress choose not to run for reelection, and those who do can rest assured that the current system of campaign financing provides them with almost a lifetime claim to the seat they hold.

The same is true in other branches of government. Among federal judges, between 1980 and 1986 only 28 judges left the bench for any reason whatsoever, including retirement, health, or the desire for new challenges. The Commission itself foresees only 40 judges leaving the bench in this decade. Out of about 800 members of the federal judiciary, this is an enviable attrition rate.

And in the executive branch, there is certainly no shortage of competent people willing to take charge of government departments or to serve the president in the White House. If there is any common thread to why people do leave public service, it is because they become disenchanted with the lack of leadership in the government itself. People are not leaving government because of lousy pay; they are leaving because of lousy government.

Underlying all of this is the pernicious assumption that the 99 percent of Americans who earn less than $89,500 plus benefits do not constitute a pool of talent that can fill these 2700 U.S. legislative, executive, and judicial positions. Why do we assume

that our rulers need be drawn from the top 1 percent of wage earners? We are supposed to have a government "of the people," not drawn from a patrician class of corporate elitists and coupon clippers.

The Commission argues unpersuasively that paying higher salaries to top officials will attract more talented people into government. But there is no evidence -- ancient, medieval, or modern -- that this is the case. On the other hand, perhaps one of the unspoken premises for the economic elite's desire for higher salaries for top government officials is that it will be easier to attract recruits from its own ranks. For instance, it was reported that former Attorney General Meese advised President Reagan that higher salaries for judges were essential to attract candidates from the conservative side of the lawyer spectrum -- meaning corporate lawyers. Finding candidates from the upper economic elites is more likely if pay scales are adjusted upward -- this is the value system behind the rhetoric that higher pay secures higher quality.

The Commission's recommendations, transmitted so blithely by President Reagan and endorsed by President Bush, are a slap in the face to millions of qualified Americans -- engineers, scientists, professors, administrators, lawyers, blue and white collar workers, civic leaders, and holders of public office at the state and local level -- who would be delighted to take one the 2700 positions affected by the Commission's recommendations -- <u>and</u> to earn more money doing so at the current salary scale.

This is a watershed issue for Congress.

This time, the emperor truly has no clothes, and everyone can see his shameful nakedness.

For Congress to allow this salary scale to take effect, without a vote, without any mind to the will of the people, is an act of cowardice and self-interest that will echo for generations to come.

It is therefore necessary for Congress to vote immediately to reject the proposed increase, and then to pass legislation to reform the process so that this travesty is not repeated in four years. At a minimum, Congress must ensure that from now on it votes directly on its salary level, following public hearings, and that the increase not take effect until the next Congress, when voters can make their judgment on how they have been represented.

Our nation is facing serious problems. For years, the federal government has presided over enormous deficits, cutbacks in critically needed programs in housing, food, health, safety, mass transit, and education. Throughout the nation, there are large pockets of recession, unemployment, declining real wage and family income, and nationally more poverty and hunger than ten years ago.

Congress has looked the other way as the savings and loan morass spread, as the nuclear weapons plants seeped more radioactive material into the environment, as so many other problems wrought by power blocs festered.

Our system of government is founded on the belief that our representatives represent us. As the gap widens between the rulers and the ruled, it is more and more unlikely that federal government officials can, heart and soul, identify with and fight for the quarter billion people who call themselves Americans. A very fundamental issue is at stake, and I urge Congress to pay close attention to the people's voice. There are reasons behind their rage, which the Congress would do well to heed and respect. We ought to have a government that leads by example, rather than by hypocrisy, which is bad for democracy.

Thank you.

NATIONAL TAXPAYERS UNION

A NONPARTISAN, NONPROFIT ORGANIZATION DEDICATED TO THE PUBLIC INTEREST

325 PENNSYLVANIA AVENUE, SOUTHEAST WASHINGTON, DISTRICT OF COLUMBIA 20003 TELEPHONE: AREA CODE (202) 543-1300

Testimony

before the

Senate Governmental Affairs Committee

on

S.J. Res. 6/S.J. Res. 20
The Congressional Salary Accountability Act of 1989

February 1, 1989

by

James Dale Davidson
Chairman, National Taxpayers Union

Testimony
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The Congressional Salary Accountability Act of 1989
February 1, 1989
by
James Dale Davidson
Chairman, National Taxpayers Union

Mr. Chairman and members of the Committee, my name is James Dale Davidson. I am chairman of the National Taxpayers Union, a nonprofit, nonpartisan public interest organization with over 150,000 members throughout the 50 states. Thank you for the opportunity to appear before the Committee today to present our views on the salary increases for members of the executive, legislative, and judicial branches submitted to Congress by President Reagan on January 9th.

The National Taxpayers Union wholeheartedly supports S.J. Res. 6 and S.J. Res. 20 which would revoke these increases and abolish the low, dishonest method that produced them. There could be no worse example set than the spectacle of Congress finagling a 50% pay raise out of an empty treasury.

The current method for setting Congressional salaries is a charade designed to deny responsibility and evade accountability. It mocks the spirit of Article I, Section 6 of the Constitution, which says that "Senators and Representatives shall receive a compensation for their services, to be ascertained by Law." It abandons representative government for rule by commission.

I ask the members of the Committee to imagine employing a similar set-up to deal with other issues before the Congress. Imagine a commission headed by Adolfo Calero to determine funding for the Nicaraguan Contras. Do you think the Speaker of the House would be unable to find time on the legislative calendar to vote on it within the 30-day deadline? And after the 30 days had expired, do you think members of the House and Senate would throw up their hands and say they were sorry, of course they were opposed to funding the Contras, but it was just too late to do anything about it now?

Of course not. But that is exactly what is going on now with these pay raises. A system of mutual bribery has been created that works with winks and nods between those who stand to benefit.

Conflicts of Interest

The Commission on Executive, Legislative, and Judicial Salaries

that recommended the raises to the President purports to be an independent and impartial body. It is nothing of the kind. It was appointed by the President, the Chief Justice, the Speaker of the House, and the President of the Senate.

Virtually every person on the Commission is a Washington insider who stands to gain from acting in a way pleasing to the executive, legislative, or judicial branch. They were appointed as judges in a case that had already been decided. The only question was how large a pay increase would be recommended.

The President who approved these recommendations and sent them to the Hill on January 9, eleven days before he left office, raised his own Federal pension by $55,500 a year.

And the conflicts of interest continue. We are now treated to the spectacle of the Speaker and the Minority Leader of the House, with the connivance of many other members in both houses, refusing to schedule a vote on the President's recommendations until after the 30-day period has elapsed. For this bit of obstructionism, the Speaker's salary will be increased $60,000 and the Minority Leader's $55,500 a year. If similar sums were paid to bribe the Speaker and the Minority Leader to bottle up any other piece of legislation, we would call the police.

The Facts Don't Justify 50% Raises

Besides the underhanded methods used to get this 50% pay raise, the justifications advanced to support it are misleading in the extreme. The Commission adopted 1969 as the base year with which to make comparisons. That just happens to be the year Congressional salaries reached their all-time high in constant dollars. The average Congressional salary in this century in 1988 dollars is $81,803 (see table appended). If we go back 40 years instead of 20 as our standard, the Commission should have recommended a $27,525 pay cut in order to keep salaries even.

Furthermore, merely comparing salaries in various eras ignores the tremendous expansion in the past few decades of non-salary compensation. The Congressional pension system is among the most generous in the world. It provides benefits 2-3 times as great as those in comparable private systems. And these benefits are fully indexed for inflation, thereby protecting members of Congress from the results of their fiscal malfeasance while in office. The National Taxpayers Union estimates that Congressional pensions are now worth almost $27,000 per annum. A 50% pay increase will raise this sum by a comparable amount.

When all fringe benefits are added to current salary, the total Congressional compensation package is already worth at least $120,000

p.a. This puts members of Congress in the top 1% of all salaried workers in the country.

Some people who should know better have said that the current salary paid to Representatives and Senators is not high enough to attract the best people in the country to public service. I suppose this means that the 101st Congress at $89,500 is more capable than the 1st Congress, whose members earned $6 per diem. If that is so, then I don't see why we should be satisfied with a pittance of $135,000. Will $1 million be enough to attract the kind of leaders our country needs?

The folly of this kind of reasoning is best exposed by considering the attrition rate for members of Congress. When a job doesn't pay enough, people tend to look for other jobs. Twenty-seven members of the last Congress chose not to run for re-election. Twelve of those ran for higher office. That means that just 15 quit.

With a 50% raise, the voluntary attrition rate for members of Congress will approach even closer to zero.

A Pay Raise Will Lead to Higher Deficits

What are the larger effects of this proposed pay raise? You have been told that it will cost at least $300 million in higher salaries and benefits. But its repercussions in the wider world have hardly been mentioned.

The Federal work force comprises 5.4 million employees. Total payroll runs $120 billion per annum. Seeing a 50% pay raise for Congress, do you think these Federal employees will restrain their wage demands? Do you think they'll buy talk of fiscal austerity from their elected representatives? Assuming that other Federal employees demand and receive a mere 15% raise, you face an $18 billion p.a. bill.

Beneficiaries of Federal entitlement and social welfare programs aren't going to buy talk coming out of Washington about budgetary restraints, either. They'll want their piece of the pie.

In short, the 50% pay raise is not a down payment on making the tough choices that face this Congress, but rather a guarantee that no tough choices will be made. No cuts in Federal spending will be possible. The budget will not be brought under control.

The Congress risks the scorn and derision of the American people if it sneaks this pay grab through without votes in both chambers. It also risks losing its credibility.

Congress Should Lead

May I suggest that the Congress could set a different example to the rest of the nation? At the height of the Great Depression, Congress voted itself a pay cut. This sent a message that our leaders were willing to make the same sorts of sacrifices they were asking of everyone else. At a time of a $2.7 trillion national debt and record Federal deficits, the Congress should say, "We aren't going to borrow more money to raise our salaries. And we won't even consider raising them until the budget is balanced."

I would like to make one final point. Two years ago, when the last pay raise took effect after 30 days, those of us who opposed it gave up. We have wised up since then. The Federal Courts, in rejecting a suit brought by, among others, the National Taxpayers Union against the Quadrennial Commission method of setting Congressional salaries, ruled that it was constitutional. One of the reasons the Courts advanced was that the process didn't end after 30 days. Congress could change its pay at any time by simple legislation.

Therefore, we aren't going to give up so quickly this time. And I don't think the American people are going to forget about this extravagance. A recent poll published in the Washington Post on January 17 reported that 85% of the public were opposed to the Congressional pay raise and only 12% supported it. Support for the Congressional pay raise rivals the percentage of opinion that believes we never went to the moon.

Mr. Chairman, I urge this committee to move expeditiously on this excellent legislation, to block the pay raises and change the method that produced them. The American people expect and deserve a vote in both houses of Congress on the issue of Congressional pay.

Attachment

(M2:22)

NATIONAL TAXPAYERS UNION

A NONPARTISAN, NONPROFIT ORGANIZATION DEDICATED TO THE PUBLIC INTEREST

325 PENNSYLVANIA AVENUE, SOUTHEAST WASHINGTON, DISTRICT OF COLUMBIA 20003 TELEPHONE: AREA CODE (202) 543-1300

Congressional Pay, 1900-1988

Year	Nominal Dollars	Adjusted for Inflation (1988 $)
1900	$5000.00	$70800.00
1901	$5000.00	$70800.00
1902	$5000.00	$68076.92
1903	$5000.00	$65555.56
1904	$5000.00	$65555.56
1905	$5000.00	$65555.56
1906	$5000.00	$65555.56
1907	$7500.00	$94821.43
1908	$7500.00	$98333.33
1909	$7500.00	$98333.33
1910	$7500.00	$94821.43
1911	$7500.00	$94821.43
1912	$7500.00	$91551.72
1913	$7500.00	$89393.94
1914	$7500.00	$88205.98
1915	$7500.00	$87335.53
1916	$7500.00	$81192.66
1917	$7500.00	$69140.63
1918	$7500.00	$58869.18
1919	$7500.00	$51254.83
1920	$7500.00	$44250.00
1921	$7500.00	$49533.58
1922	$7500.00	$52888.45
1923	$7500.00	$51956.95
1924	$7500.00	$51855.47
1925	$10000.00	$67428.57
1926	$10000.00	$66792.45
1927	$10000.00	$68076.92
1928	$10000.00	$69005.85
1929	$10000.00	$69005.85
1930	$10000.00	$70800.00
1931	$10000.00	$77631.58
1932	$8500.00	$73569.68
1933	$9000.00	$82113.40
1934	$9500.00	$83865.34
1935	$9875.00	$85054.74
1936	$10000.00	$85301.20
1937	$10000.00	$82325.58
1938	$10000.00	$83886.26
1939	$10000.00	$85096.15
1940	$10000.00	$84285.71
1941	$10000.00	$80272.11
1942	$10000.00	$72540.98
1943	$10000.00	$68339.77
1944	$10000.00	$67172.68
1945	$10000.00	$65677.18
1946	$10000.00	$60512.82
1947	$12500.00	$66143.50
1948	$12500.00	$61373.09
1949	$12500.00	$61974.79
1950	$12500.00	$61373.09
1951	$12500.00	$56876.61
1952	$12500.00	$55660.38
1953	$12500.00	$55243.45
1954	$12500.00	$54968.94
1955	$22500.00	$99314.21
1956	$22500.00	$97850.12
1957	$22500.00	$94483.99
1958	$22500.00	$91974.60
1959	$22500.00	$91237.11
1960	$22500.00	$89797.07
1961	$22500.00	$88895.09
1962	$22500.00	$87913.91
1963	$22500.00	$86859.32
1964	$22500.00	$85737.35
1965	$30000.00	$112380.95
1966	$30000.00	$109259.26
1967	$30000.00	$106200.00
1968	$30000.00	$101919.39
1969	$42500.00	$137021.86
1970	$42500.00	$129363.71
1971	$42500.00	$124031.33
1972	$42500.00	$120071.83
1973	$42500.00	$113035.31
1974	$42500.00	$101861.88
1975	$44600.00	$97942.93
1976	$44600.00	$92600.59
1977	$57500.00	$112148.76
1978	$57500.00	$104170.93
1979	$60662.50	$98778.86
1980	$60662.50	$87011.85
1981	$60662.50	$78834.53
1982	$69800.00	$85469.39
1983	$69800.00	$82805.63
1984	$72600.00	$82611.38
1985	$75100.00	$82512.10
1986	$75100.00	$80954.32
1987	$89500.00	$93075.79
1988	$89500.00	$89500.00
Average 1900-1988		$81802.80

SENIOR EXECUTIVES ASSOCIATION

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Statement of the

SENIOR EXECUTIVES ASSOCIATION

Submitted to the

Senate Governmental Affairs Committee

January 31, 1989

During the past month, the President and General Counsel of the Senior Executives Association have appeared on over 30 radio and television shows across the country - from Los Angeles to Little Rock, from Dallas to Dayton. They spoke in favor of the President's proposals for congressional, executive and judicial salaries. On most of these shows, they took listener call-ins. With few exceptions, the callers opposed the increases.

Clearly, public opposition is focused primarily on the congressional raises, but not a great deal more sympathy or understanding exists for the executive and judicial raises. The Association believes that is because most Americans cannot comprehend the "catch up" nature of these increases. On the eighteen occasions since 1969 in which Congress could have increased its pay under either the Commission or comparability procedures, it has rejected such an increase ten times. Had more modest cost of living increases been accepted over the past twenty years, the President's proposals would not have reached the size needed to approach comparability just with state and local government and the non-profit sector. Comparability with the private sector would require substantially more than the amount proposed by the Quadrennial Pay Commission and President Reagan.

The demagoguery which has been practiced by many who oppose the raises is not in the public interest. Animosity toward public service is the very clear and dangerous by-product of careless arguments in opposition to the pay proposals. These arguments often denigrate the responsibilities of Members of Congress, Federal executives and judges, overstate their benefits, and suggest that their accomplishments are few and that their qualifications are irrelevant.

In fact, few are qualified to do these jobs, and those who are qualified often won't take them, no matter what the pay. They would not put up with the innaccuracies levied about, and disrespect shown to, public servants in the course of this debate. It is small wonder that so few of the best and brightest wish to serve their government. Their public service is rewarded with low pay, scorn for their efforts, distortions of their Federal employment benefits, and disparagement of their accomplishments. Is it any wonder so many career executives want out and that over 60% would not recommend careers in public service to their children and those they care about?

The Association supports the congressional pay raise because we want to keep Congress on the public payroll and off the payroll

of special-interest groups through the banning of acceptance of honoraria. We want to ensure that our representative democracy is not jeopardized by leaving public service only to those who are rich enough to afford the financial sacrifice. Over the last 20 years, the purchasing power of congressional salaries has declined by more than 30 percent. The disparity is even greater in Washington, D.C., where housing and food costs are among the highest in the nation and where Members of Congress must maintain one of their two residences.

While the congressional pay increase is not popular, it is right, as are the increases for the executives and the judiciary. Last summer, the Association contacted each of the Presidential Distinguished Rank Award (the nation's highest civil service award) winners for 1986 and 1987. At that time, 24% of them had left government, a rate two and a half times the overall annual leave rate for the Senior Executive Service. Of the Distinguished Executives who had left, 75% were employed in private industry.

The Association has reports, from agencies throughout the Executive Branch, of executives poised to leave if the President's pay proposals are rejected by the Congress. These are not idle threats, but decisions quietly and carefully reached after years of frustration.

A strong desire, not for financial gain, but for the opportunity to serve the public will always be a strong motivation for public service. It has kept many Americans in federal service. But it cannot overcome the declining purchasing power of the salaries, or the ever increasing gap with the private sector, the non-profit sector, and state and local government.

The Federal government already faces critical career executive vacancies in many agencies. These positions are often refused by candidates outside government because the salaries are non-competitive. Government managers often do not aspire to these positions because they often stand to take a pay cut if they are promoted to the executive service. We cannot afford the further loss of skilled, experienced career executives. The Association urges the Congress to accept the President's proposals.

So that the Committee might more fully understand the impact of these proposals on the career executive corps, attached, for the record, is the Association's testimony before the Commission on Executive, Legislative and Judicial Salaries.

SENIOR EXECUTIVES ASSOCIATION

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Statement of the

SENIOR EXECUTIVES ASSOCIATION

Before the

COMMISSION ON EXECUTIVE, LEGISLATIVE AND

JUDICIAL SALARIES

Given by

CAROL A. BONOSARO
PRESIDENT

November 10, 1988

I am pleased to appear today before the Commission on Executive, Legislative and Judicial Salaries on behalf of career Federal executives. While the Commission's report and recommendations may not address directly the compensation of members of the Senior Executive Service (SES) and equivalent pay systems, the fact that the SES is capped statutorily by the pay set for Executive Level IV, and that "supergrade" employees are capped by the pay set for Executive Level V, makes your deliberations of vital importance to the future of the career service.

As you know, the 1986 interim Quadrennial Pay Commission's recommendations were substantially reduced by the President's recommendation to the Congress. The result was that career executives' raises averaged 6.5% in 1987. Then, because of a congressionally mandated pay freeze, 70% of career executives were denied any pay adjustment in 1988. Thus, the need for salary relief is even more apparent today.

Since January 1 of this year, the Senior Executives Association has been engaged in collecting data regarding the compensation crisis affecting Federal executives. We have undertaken this task because there is no body routinely and directly charged with considering and reporting on the compensation of executives in the SES or those in "supergrade" positions. My testimony will report to you the results of our efforts, which have been reinforced by recent reports of the Twentieth Century Fund Task

Force on the Senior Executive Service, the General Accounting Office (GAO), the Merit Systems Protection Board (MSPB), the President's Commission on Compensation of Career Federal Executives, and the National Academy of Public Administration.

On August 2, 1988 President Reagan awarded Distinguished Ranks, the nation's highest civil service award, to 60 Senior Executives, the top managers in the career civil service. By August 1989, we project that 24 percent of these Distinguished Executives will have left government service and, of those, 80% will have gone on to greater financial rewards in private industry. This projection is based on our identification, in July 1988, of the status of each of the Distinguished Rank Award winners for 1986 and 1987.

The problem America faces is the decreasing ability of our Federal government to attract and retain the best and the brightest career executives to manage government's business efficiently, effectively, and productively. These career executives hold positions of enormous responsibility, positions such as director of shipbuilding for the U.S. Navy, Deputy Commissioner of the Internal Revenue Service (which is responsible for collecting nearly $ 782 billion in taxes each year), Deputy Director of the National Institutes of Health, the

Inspector General of the Veterans Administration, the Commissioner of Customs for the New York Region, and others , some of which have been identified as numbering among the toughest one hundred management jobs in Washington by the recently published Prune Book of the Center for Excellence in Government. The present compensation of these executives bears little relationship to their responsibilities or their achievements.

Career Senior Executives

- led the Securities and Exchange Commission's investigation of insider trading
- led the creation and work of task forces responsible for the interdiction of large cocaine shipments
- make major contributions to the advancement of knowledge vital to the understanding and eventual control of diseases such as cancer
- negotiate environmentally acceptable agreements with firms such as those which built the Alaskan oil piplines
- organized national ozone expeditions to Antartica
- guided the building of the all jet fleet Air Force
- won the 1985 Nobel Prize in chemistry
- directed the scientific analysis of lunar landing data

While the members of this Commission are far more aware of career executives' responsibilities than the average citizen, as a further, and little known, indication of their achievements and value to the nation, of the 58 executives recognized by the President with Distinguished Ranks in 1987, the fourteen for whom dollar savings were specified collectively saved the taxpayers 5.7 billion dollars.

And so the Senior Executives Association asks, if these achievements do not merit fair compensation, what does? The American way is to reward people for their experience, their talent, their education, their accomplishments. Americans usually expect workers to be compensated in some direct proportion to their responsibilities. That is why we all want a good education for our children. Americans believe that education and accomplishment are the keys to a rewarding career.

Unfortunately, that is far from true with regard to Federal government service, at least with regard to monetary rewards. By our calculation, compensation of senior career executives in the Federal government currently lags at least 40% behind their private industry counterparts. And, indeed, in our series of case studies, those executives who leave increase their compensation, on average, by 40% over their Federal government salaries. Obviously, some career positions deserve far in excess of even that amount.

The only study of which we are aware to directly compare Senior Executive positions (at the ES-6 level) to private sector counterparts is the 1984 Hay/Huggins Company & Hay Management Consultants "Study of Total Compensation in the Federal, State and Private Sectors," submitted to the House Committee on Post Office and Civil Service. That study found that the ratio of private sector total cash compensation to ES-6 total cash compensation was 158%. Put another way, an ES-6 was being compensated at 63% of the comparable private industry position (at that time, $71,927 v. $113,968). A 58% pay raise for ES-6 would have been required to achieve comparability. While more current and comprehensive studies must be commissioned, today, an ES-6 earns $77,500, only 8% more, and this omits any consideration of inflation since 1984.

No one ever told these executives, nor did they expect, that they would earn as much as their counterparts in private industry. They chose to commit themselves to public service and have been willing to sacrifice to serve their government. We have reached the point, however, where the sacrifice is unreasonable. It is unconscionable to trade on the dedication and patriotism of our career executives any longer.

Clearly, not all executives leave. Most remain in government, but, of those who remain, many have been and are being paid less than the very people they supervise, as is apparent from the pay chart which I am submitting with my testimony. While the chart compares SES pay to GS/GM-15 pay, I should note, as well, that most GS-16 executives and all GS-17 and GS-18 executives receive identical pay, although the schedule set by Congress properly differentiates among them because of differing levels of responsibilities. The differentiation has been unachievable in practice because of the constraining effect of the EL V ceiling mandated by Section 5308 of Title 5 of the U.S. Code.

This situation alone is intolerable and cannot continue to exist. It is neither fair nor right to expect executives, who take greater risks, have greater responsibilities, and achieve greater goals, to supervise people who earn more than they do. It contributes to poor morale and often to a desire to leave government at the earliest opportunity.

With your permission, I would like to submit for insertion in the record comments from our case studies of executives who have left government, those who are still in government but are being outpaid by those they supervise, and those still in government who have received offers from private industry. I believe that

these executives, speaking for themselves, offer a picture of the effects of the compensation crisis far more graphic and compelling that statistics alone can ever reveal.

In addition to members of the SES, we also speak for those who are in "supergrade" positions (GS-16, 17, and 18). When the SES was created, some agencies and groups were excluded from entering the SES. Several agencies, such as the FBI, Drug Enforcement Administration and others, have established comparable SES systems. There remain, however, about 800 employees in the supergrade category. They are, for the most part, in highly technical and/or scientific positions, in some few quasi-governmental corporations such as the Pension Benefit Guaranty Corporation, or are Board of Contract Appeals and Administrative Law Judges in various Federal agencies.

There exists no mechanism for setting these senior level employees' pay because their positions are not included in comparability studies each year for the general schedule, and because most would be in the SES, but for legal restrictions. We believe that their pay should be comparable to those in SES positions and should neither be artificially established nor artificially constrained by Title 5 of the U.S. Code.

Therefore, we request that the Commission recommend that all remaining employees in supergrade positions be either reassigned into the SES (with appropriate legal protections for Board of Contract Appeals and Administrative Law Judges so that judicial independence is maintained) or that supergrade salary levels be tied to SES pay levels by law so that supergrade pay is adjusted at the same time and in the same manner as that for SES employees.

Finally, we have the problem of executive vacancies in many agencies, vacancies that continue too long, that are extremely difficult to fill primarily because of inadequate compensation. These are vacancies that candidates outside government often refuse because the salaries are non-competitive and to which government managers often do not aspire because they may stand to take a pay cut if they are promoted to the executive service. Again, I would like to submit for the record some of the responses of Federal agencies to SEA's January, 1988 inquiry regarding vacancies and recruitment problems.

As a further indication of the difficulties of attracting outside candidates, I should note that the President's Commission on Executive Exchange found it necessary in 1985 to seek legislation to permit up to ten private sector executives to be placed in the government while having their complete

salaries and benefits paid by the private sector employers during their one year term in the government. Without that legislation, the Commission could not overcome difficulties in attracting qualified private sector executives to the program because their salaries would have been limited to the compensation paid federal executives. Private sector executives could not afford to take the enormous pay cuts necessary to participate in this prestigious program.

A December 1987 Merit System Protection Board study, Federal Personnel Policies and Practices - Perspectives from the Workplace, reported that, of the Senior Executives surveyed, more than 60% said that salary is a strong reason for leaving government. And, with the new federal retirement system which will permit younger executives to leave without losing retirement benefits as older executives (in the Civil Service Retirement System) currently stand to do, we will see more and more executives who will vote with their feet in the future.

We risk creating an endangered species - the highly qualified career Federal executive, who provides the "glue" in the Federal structure, the continuity and institutional memory essential for effective government. It hasn't reached the point of catastrophe yet, but, without significant steps toward closing

the current pay comparability gap, we are moving steadily in that direction. Many executives are remaining only to await the outcome of this Commission's deliberations, and subsequent action by the President and the Congress, before making a decision to stay or leave.

In the Association's view, the significant steps which must be taken to reverse this trend include:

1. Provision for routine comparability studies with regard to total compensation of career Federal executives. We believe this should be included as part of the Quadrennial Pay Commission's duties, with the studies being provided to the Commission when appointed.

2. Elimination of the overlap between GS/GM-15 by mandating that ES-1 salaries can be no less than 105% of GS-15, step 10.

3. Elimination of the supergrade categories of the general schedule (GS-16, 17, and 18) and reassignment of all employees in those positions into the SES (with safeguards as necessary), or tying supergrade pay to appropriate SES pay levels.

4. Raising Executive Level IV (the cap for SES pay) by a minimum of 40%, so that the pay comparability gap is substantially eliminated. While SEA originally believed that a goal might be set for comparability in executive compensation, along with a schedule for achieving it (e.g., a four year schedule during which period both regular pay increases and "catch-up" increases would be provided annually in order to reach compensation levels set at 95% of that of comparable positions in private industry), we no longer believe that such a plan will be implemented sufficiently soon to avert the growing crisis. This major step would also act to reduce pay compression at the ES-1 through ES-6 levels, a problem cited by the President's Commission on Compensation of Career Senior Executives.

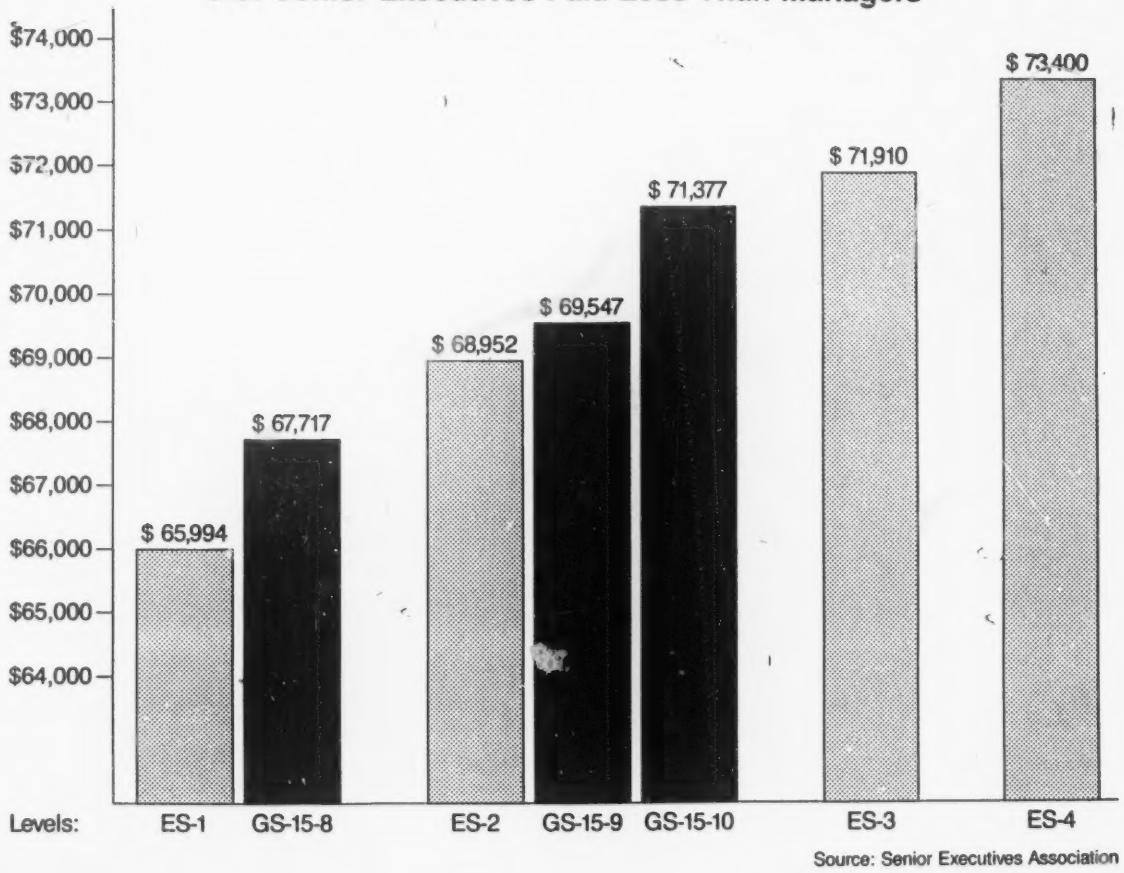
FEDERAL EXECUTIVE

SENIOR EXECUTIVES ASSOCIATION

SURVEY OF
PRESIDENTIAL DISTINGUISHED RANK
SENIOR EXECUTIVES

	1986	1987	1986-1987
	Number (Percent)	Number (Percent)	Number (Percent)
Distinguished Rank Executives	44 (100)	58 (100)	102 (100)
Still in government	32 (73)	46 (79)	78 (76)
Left government	12 (27)	12 (21)	24 (24)
- - -

U.S. Senior Executives Paid Less Than Managers



Source: Senior Executives Association

FEDERAL EXECUTIVE

SENIOR EXECUTIVES ASSOCIATION

QUOTES/EXECUTIVE CASE HISTORIES
1988

RESIGNED/RETIRED CASES:

"It didn't make sense for me to continue where my salary was no more than people working for me or even several levels below me."
--An ES-5 who resigned in 1987 from the Environmental Protection Agency where he was responsible for 2000 employees, 16 different locations and a $365 million budget.

"Pay--capped out--same magnanimous increases of only 2-4%."
--Left an ES-3 position at the Health Care Financing Administration to enter private industry where he earns over $100,000.

"Took opportunity to leave on basis of growth in industry and limit[ed] pay and perks in federal service."
--Managed 2000 civil servants and 1000 support contractors and an annual budget of over $300 million as an ES-6 at NASA. Presently Vice President and Director of a major aviation supplier corporation; earning $140,000 plus benefits.

"Topped out at ES-4; couldn't retire for 6 more years so left when received the offer."
--After leaving HUD in 1986 where he managed agency housing programs valued at $44 billion, became an Executive Vice President who earns $145,000 with a 20% bonus.

19-682 0 - 89 - 9

"...in having relocated from a federal position to one in a DC area public university, my case provides a good example of pay disparity within the public sector. My present job would probably classify as an ES-2 level. In moving to it 3 years ago, I actually took a $3K cut but am now $10K over my former SES pay level--My case history is not a dramatic one but illustrates the quick cumulative impact of a relatively liberal annual increase policy in Maryland state government, which has increased my salary by $16,500 (about 20%) in 3 years while federal rates [are] up only 10%."

--A 1984 resignee from National Oceanic & Atmospheric Administration who was responsible for oversight of agency-wide administration and technical support (including computing) of $1 billion/year.

Left because "government salary not commensurate with responsibility, demands and stress of job; but a major factor [was] the extreme frustration resulting from twelve years of administration 'bad mouthing' the federal employees and the total lack of concern of the administration and the Congress for maintaining a quality federal workforce."

--An IRS ES-4 who left the government in 1988 and is now under contract with an accounting firm where he earns $105,000 ($120,000 by 1991).

"Several times during the past few years, I have been approached by firms in the private sector with offers of employment. Although the offers were attractive, I did not accept any for two reasons.

First, I love government service. I recognize that it is very difficult to find private sector jobs with the scope and impact of a good senior executive position within the Federal government.

Second, I actually believed that the recommendations of the quadrennial commission would be taken seriously by the President and the Congress.

Well, time has revealed just how naive I was!

When the Congress further rubbed salt into this wound by its most recent hypocritical action to deny a miserable 2% increase to judges and SES members because it [Congress] received a $15,000 increase last year (while we got $3,000), I decided that enough was enough.

Consequently, ...I will be leaving Federal service after 23 years (including military) and at age 45. Under the least optimistic circumstance, the taxpayers could have expected at least another 10 years of service from me. I won't even dwell upon the potential value I might have added during that period of time.

Some have recently pronounced publicly that the government should not attempt to recruit the "best and the brightest". Along with Messrs. Volcker and Richardson, I happen to believe that this short-sighted policy will create serious problems for this country."

--former Director, Debt Collection and Management Assistance Service, Dept. of Education [ES-5].

Left because of "lack of economic opportunity--compensation not commensurate with responsibility."

--This former ES-4 executive tripled his salary upon leaving government service, where he managed 150 people with an average grade level of 14.

"Saw no financial incentive to stay"

--As an ES-4 at the Internal Revenue Service supervised 2500 employees whose work involved major Fortune 500 Companies. Now earning $90,000 (contracted to $110,000 by 1990) in private industry.

VACANCY CASES:

"I am aware of many, many GM-15s who refuse to apply for SES positions because they see no advantage to doing so."

--Divisional director of research and technology for the United States Army [ES-4]. Manages over 2,000 employees, $320 million, and approximately 300 contracts.

"Only one applicant the first time advertised--announcement cancelled and only two applicants on the second try. One of two applicants chosen.

Didn't pay for anyone to move. Those qualified were grade 15 --no one would transfer to NYC area because it didn't pay to move (not enough of an increase to justify a transfer).

Recruiting efforts were fruitless--many turndowns by qualified people who were actually refusing to apply."

--District Counsel [ES-3] position in the Internal Revenue Service; vacant 1/87-12/87. Responsibilities include the legal representation of the IRS for an entire district.

"GM-15 managers in State offices view the system as a joke. Vacant positions are difficult to fill with qualified people from State offices. Out of [fifteen] GM-15's in the Division, only one applied for the most recent SES vacancy. This was only after considerable pressure was exerted by the Administrator."

--Division director at the National Agricultural Statistics Service [ES-3]. Administers 44 regional offices including 675 full-time employees and 3,000 part-time employees, and a budget of approximately $40 million.

"I have had a great deal of difficulty in getting subordinates to apply for feeder group because they see little advantage to participation."

--Regional director at the National Park Service [ES-4]. Allocates resources (monetary and natural) for 41 National Park areas. Manages 3,000 employees and $90 million annually.

"The real danger is what lies ahead of us. Many present high-ranking positions are already occupied by capable career executives who have accumulated many years of service and who probably feel it is more desireable to remain in government until they qualify for pension benefits. This is quite understandable.

Thus, while there are some immediate vacancies at the moment, the serious problem is that there are not too many highly qualified employees who will stay around long enough to be available for the jobs when they become vacant."

"While I really enjoy my job, and although I know I am a valuable asset to my agency, I will probably have to leave within a few years if the salary structure does not improve drastically. My children are approaching college age and I just cannot afford to stay at the current salary.

Believe me, there are many, many other employees who are precisely in the same situation as I am. The question is - who will follow us? Clearly, the government is the loser under these circumstances."

--District counsel for the Internal Revenue Service [ES-3]. Responsible for all legal representation of the IRS for an entire state. Supervises 35 lawyers and 25 clerical and paralegal employees.

"Current GM-15s have minimal incentive to seek or accept SES appointments. Greater potential for awards/bonuses at GM-15 level which further narrows pay gap. Major deterrent to potential SES from outside gov't."

--Divisional director of development and engineering for the United States Army [ES-4]. Manages operating budget of $6 million, 130 professional and support employees, and $28 billion in annual procurements.

OFFERS TO CURRENT EXECUTIVES:

"If the offers get much higher it will be very tempting to leave."

--Divisional director of research and technology for the United States Army. Manages over 2,000 employees, $320 million, and approximately 300 contracts.

"The pay gap is approaching critical mass."

"Our best people with 25+ years [of] service are leaving at the most productive point in their careers. All I have talked to have cited bureaucracy and pay as their biggest reasons for leaving. These employees now have children entering colleges, etc. If they are talented they don't have to continue putting up with the frustration when they can leave and make more money on the outside."

--Sectional director for the United States Army [ES-4]. Responsible for 70 employees and $4 million budget. Noted a preliminary offer from private industry of $115,000.

"For the past 2 years, my gross salary has been $72,500 (annually).

In the past 2 months, without my looking for a job, I received 2 offers from state universities at $100,000 for 9 months. I just discovered what a fool I have been. I was so immersed in my research that I did not take the time to observe how abruptly federal wages were falling behind those paid by the States. The gap seems so wide, yet federal managers seem so unconcerned. Do they take me for granted?

Add to this that my agency has gotten me hooked to a contract with another agency in order to cover half of my present wages. Should I leave the federal sevice, I could most certainly turn this contract into a research proposal between the university and the other agency, so vital is the research to the security to the country. The result would be an additional $20,000 for 2 summer months, bringing a gross income of $120,000, that is to say, 60 percent more than what I am paid today."

--A senior executive in a scientific position.

"Numerous offers in the private sector--law firms--salary more than double--many benefits, etc.

At least six offers over $100,000 in the last few years.

My job is very rewarding - I feel I have much to offer and can really perform public service. However, if salary does not improve significantly, I will have to leave - children are approaching college age."

--District counsel for the Internal Revenue Service [ES-3]. Responsible for all legal representation of the IRS for an entire state. Supervises 35 lawyers and 25 clerical and paralegal employees.

OVERLAP CASES:

"It makes me angry when I think about it. I would be making more money if I were never "promoted".

--Divisional manager at the Department of Housing and Urban Development [ES-2]. Supervises 170 employees and manages $100 million annually.

"From my own perspective the federal pay picture in total is a 'disaster'. We are losing talented employees at all grade levels in my region of the country (northwest). It has also been a real morale buster to experience my own personal pay and pay relative to private sector/state government employees shrink over the last several years."

--Assistant chief at the Department of Agriculture [ES-5]. Responsible for an annual budget of over $100 million.

"When the right GM-15 State office position becomes available, I will strongly consider taking it and leaving the SES. My current position is one of the most challenging and rewarding I have ever had. However, a very heavy travel schedule plus 50-hour work weeks are hard to justify when comapared to the pay and reduced stress for a GM-15 position."

"GM-15 managers in State offices view the system as a joke. Vacant positions are difficult to fill with qualified people from State offices. Out of 15 GM-15's in the Division, only one applied for the most recent SES vacancy. This was only after considerable pressure was exerted by the Administrator."

--Division director at the National Agricultural Statistics Service [ES-3]. Administer 44 regional offices including 675 full-time employees and 3,000 part-time employees, and a budget of approximately $40 million.

"It is [pay] policies like this that will limit my 'stay' with the Federal government."

--Director of research and development at the United States Army [ES-4]. Supervises 230 employees and $100 million in contracts per year.

"Considering the responsibility of this position, this is outrageous. As soon as it's worth my while (i.e., that I've gotten the experience/exposure I feel I need at my young age) I will return to private industry where I've already been a V.P."

--Sectional director of research and development for the United States Army [ES-4]. Directly responsible for approximately 1000 employees and approximately $300 million budget.

"I am aware of many, many GM-15s who refuse to apply for SES positions because they see no advantage to doing so."

--Divisional director of research and technology for the United States Army [ES-4]. Manages over 2,000 employees, $320 million, and approximately 300 contracts.

"No overlap but responsible for 3-4 GM-15's--salary differential too narrow. At stage of career where not practical to leave gov't service but provides incentive to retire at first opportunity.
Current GM-15s have minimal incentive to seek or accept SES appointments. Greater potential for awards/bonuses at GM-15 level which further narrows pay gap. Major deterrent to potential SES from outside gov't."

--Divisional director of development and engineering for the United States Army [ES-4]. Manages operating budget of $6 million, 130 professional and support employees, and $28 billion in annual procurements.

"I will retire as soon as I can, or possibly leave sooner...In my profession, I could go into private industry for at least a 15% increase not including benefits; possibly as high as 50% increase.

--Divisional director for the United States Navy [ES-4]. Manages computer base of $1 billion that spans 1500 activities and 600 ships. Supervises 600 employees and nearly 800 work years of contractor support.

"Frankly, this is the most disappointing aspect of my job. I truly enjoy my work but it is clear that the system is taking advantage of me. I'm five years from retirement eligibility, and I will clearly be looking to leave at age 55 if the compensation arrangement does not improve."

--Divisional Director for the Internal Revenue Service [ES-3].

"The impact has resulted in a major disincentive for organizational mobility and nearly total lack of interest (on the part of employees within this Office) in pursuing career paths that would lead to SES positions within the IRS or other Federal Agencies."

--Assistant Commissioner for the Internal Revenue Service [ES-2]. Functional supervisor of over 17,000 employees and a budget of approximately $700 million.

"...I think it ridiculous that my supervisor, an agency head with significantly more responsibility, has the same salary as I do!"

--Divisional chief for the United States Army. Responsible for systems and testing evaluation.

"SES salaries are being depressed to the degree that subordinate GM pay levels, when coupled with step increase and merit pay bonuses, are far more attractive when viewed against responsibilities. SES pay levels must increase if experienced professionals are to be retained during the inevitable reemergence of a proud and professional civil service."

--A federal executive.

FEDERAL EXECUTIVE

AGENCY RESPONSES TO
SENIOR EXECUTIVES ASSOCIATION INQUIRY

January, 1988

AGENCY FOR INTERNATIONAL DEVELOPMENT: "Our greatest recruitment problem has been in finding SES candidates with strong private sector business experience."

DEPARTMENT OF AGRICULTURE: "...it is reasonable to assume that the pay ceiling with dim prospects for any substantial relief in the near future is a serious consideration when an individual is contemplating not only the rewards of promotion but the downside of added responsibility and risks of the SES.

Personnel officers have reported that their employees have verbally expressed their reluctance to apply for SES positions, most of which would require a relocation to the Washington metropolitan area. The new positions offer little or no pay increase, certainly insufficient to offset cost-of-living differentials and higher interest rates encountered in a move to a metropolitan center.

We have found when recruiting outside the government that well-qualified candidates were not interested because of the pay ceiling. The Food and Nutrition Service, for example, has been unable to recruit from private industry because they cannot match salaries. Consequently, most of its outside recruitment is from State governments where salaries are generally lower. The Department is definitely at a competitive disadvantage with the private sector in the search for top executive talent.

When necessary, agencies have readvertised, expanded the area of consideration, and/or concentrated their recruitment on target areas most likely to produce results."

COMMODITY FUTURES TRADING COMMISSION: "...generally have experienced a pattern of few private sector applicants in response to our SES vacancy announcements. Often the quality of experience of federal and private sector applicants has not been satisfactory. We believe that pay is a major factor in attracting applicants."

DEPARTMENT OF DEFENSE: "Experiencing some difficulty in filling one of our senior positions in the Strategic Defense Initiative Organization - that of Associate Deputy for Programs and Systems. After a first announcement, the position was offered to a current SES member now employed in Alabama - he declined. We have now completed a readvertisement with only a limited number of new applicants. Management officials may consider filling the position with a military officer if we cannot attract a well qualified civilian executive for the job."

FEDERAL HOME LOAN BANK BOARD: "Our previous chairman did express his frustration in attracting and retaining top quality staff at the senior levels of our organization. He found himself in constant competition not only with the private sector but also with other financial regulatory agencies whose compensation and benefit programs exceeded governmentwide norms."

HEALTH AND HUMAN SERVICES: In 1987 testimony before the House Subcommittee on Post Office and Civil Service, HHS officials said " a few of the many cases in HHS where we simply cannot compete with offers made by non-Federal employers -- universities, hospitals, private research facilities, insurance firms, and other corporate entities:

- An SES branch chief at NIH accepted a position of chairman of a department of a university for a salary of $212,000 with 17% per year pension contribution from the institution, college tuition benefits and other excellent fringe benefits.
- Another branch chief accepted an offer also in academia for $250,000.
- Yet another branch chief accepted a $180,000 offer plus paid health insurance, a car, and a better retirement system.

In fact, when NIH surveyed its senior executives recently, 83% of the respondents received employment offers during the past two years."

"...the difficulties we experience in attracting top leaders in technical fields and for general management positions...have similar sad stories which reflect our grave inability to compete with the marketplace.

...we have been unable to fill a top computer systems position even after expenditure of some $50,000 in an exhaustive recruitment effort. The reason why - we cannot offer acceptable salaries to any of the top outside candidates, those with the most current state of the art skills.

...we have had our employment offers refused by nearly every top outside candidate, regardless of the occupational field. Only those individuals whose salary is fairly close to the current Federal pay cap will consider HHS as a career opportunity..."

HOUSING AND URBAN DEVELOPMENT: "Although we have no major SES recruitment or retention problems, we have experienced some difficulties in attracting a significant number of highly qualified candidates for our financial management positions. We attribute this to a much higher salary rate in the private sector. Comparable compensation is critical in attracting high quality candidates to the Federal sector."

DEPARTMENT OF JUSTICE: "...where it has been necessary or desirable to recruit from outside, for attorney or management information system positions with specialized experience requirements, for example, we have found that SES salaries are often not adequate to attract private sector candidates."

NATIONAL AERONAUTICS & SPACE ADMINISTRATION: " Director of Aerophysics at NASA Ames Research Center in California has been vacant 18 months. A nationwide recruitment effort attracted several potential candidates from outside the agency, including one from private industry. None of these persons finalized an application. The individual from industry expressed serious concern over inadequate salary and benefits and, consequently, withdrew from consideration."

"While NASA is experiencing no serious erosion in SES ranks today,.....we, like you, believe that decisive steps will eventually have to be taken if the Senior Executive Service is to continue to attract and retain the quality needed to conduct the nation's business."

NATIONAL SCIENCE FOUNDATION: Continuing problems in attracting highly qualified research scientists and engineers. NSF has detailed problems before congressional committees, GAO, National Commission on Public Service, President's Commission on Compensation of Career Federal Executives. NSF has used provisions of IPA to compensate temporary scientists and engineers at the levels of the academic institutions - often above Fed. pay cap. Current appropriations legislation restricts this practice, and "we foresee even greater difficulties in maintaining quality staffing in light of the continuing pay cap."

DEPARTMENT OF TRANSPORTATION: From a response to the President's Commission on Compensation of Career Federal Executives. "...we do see a trend developing within some of DOT's mid-level engineers and technical managers. This portion of our SES selection pool is leaving the agency in favor of positions in private industry. The potential result is a lower quality SES applicant pool from which to choose. Compensation is cited as one of the reasons why these employees are leaving.

Responses to DOT SES exit questionnaires reveal that executives were unhappy with constraints imposed directly and indirectly by the Congress in the areas of compensation and program administration."

COMMISSION ON EXECUTIVE,
LEGISLATIVE AND JUDICIAL SALARIES

December 15, 1988

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On behalf of the fiscal 1989 Quadrennial Commission on Executive, Legislative and Judicial Salaries, I enclose herewith the Commission's report to you.

The Commission's principal function is to recommend appropriate salary levels for the top positions in the three branches of our government so that you may perform your statutory duty of making your own recommendations to the Congress as part of your proposed budget for fiscal 1990. Under the Quadrennial Commission statute, as amended in 1985, your recommendations take effect automatically unless and to the extent that within 30 days of your submission Congress agrees on a joint resolution disapproving part or all of such recommendations.

The Commission has concluded that the best way to measure the adequacy of present salary levels is to compare them with the salary levels which the President recommended to Congress in 1969, based on the report of the first Quadrennial Commission, and which Congress allowed to go into effect. We have found that present salary levels, stated in constant dollars, are approximately 35% less than the salary levels fixed for the same positions in 1969. Thus, our top federal officials have seen their salaries severely eroded by inflation while the compensation of all workers in the private sector has slightly improved over inflation during the same 20-year period.

As a result, many of our top Executive branch officials, members of Congress and federal judges find that they cannot remain in public office without imposing severe hardships on their families. One of our most distinguished judges, who was appointed before 1969, expressed concern that if he remained on the bench he would be unable to provide for his children the same educational opportunities that had enabled him to become a federal judge.

We have found that as a result of this salary erosion, the average period of service for top Executive branch officials has declined to 18 months. Many members of Congress are declining to stand for another term even though the reelection success rate of incumbents is better than 90%. More federal judges are resigning from the bench and returning to law practice than ever before.

We have also found that because their salaries are so inadequate, many members of Congress are supplementing their official compensation by accepting substantial amounts of "honoraria" for meeting with interest groups which desire to influence their votes. Albeit to a less troubling extent, the practice of accepting honoraria also extends to top officials of the Executive and Judicial branches.

Finally, we have also found that the inadequacy of present federal salaries severely limits the ability of all three branches to attract the most highly qualified individuals to enter the public service. The top AIDS researcher at NIH testified that because of present salary limitations, NIH has been unable for the last ten years to attract <u>any</u> qualified scientist to fill its most important senior research positions. Retired Chief Justice Warren Burger informed us that he knew of one Court of Appeals vacancy that was turned down by ten qualified lawyers before anyone could be found to fill it.

Accordingly, the Commission unanimously recommends that salary levels for top federal officials be set at approximately the same amount in constant dollars as the salary established for the same positions in 1969, with appropriate adjustments to maintain current relationships among the various positions. We further recommend that Congress enact legislation abolishing the practice of accepting honoraria in all three branches. We are advised by the Office of Management and Budget that these salary increases will be offset by other savings in personnel costs.

We appreciate the opportunity of serving on the Commission. We believe the time has come to pay fair salaries to our highest federal officials, and that fairness to them is in the national interest of us all.

Sincerely,

Lloyd N. Cutler

Lloyd N. Cutler
Chairman

THE WHITE HOUSE

WASHINGTON

January 6, 1989

Dear John:

On January 9, 1989, I will be forwarding to the Congress the compensation recommendations of the Commission on Executive, Legislative, and Judicial Salaries. This bipartisan Commission composed of individuals of superior achievement in the public and private sectors carefully reviewed the compensation of senior Federal officials and unanimously recommended increased levels of compensation.

Fair compensation for those who bear the responsibility for effective functioning of our government is critical at this juncture of history. The American people expect excellence at the top levels of government, and they deserve to get it. But our Founding Fathers also envisioned a citizen government whose members are drawn from all parts of our society.

We must not allow Federal service to become the province only of the wealthy. We must ensure that the door to service remains open to Americans who must work to support their families, educate their children, and save for their retirement. As it now stands, government service for any significant length of time presents a financial burden that fewer and fewer of those who are most highly qualified can afford to accept.

Since 1969, salary levels for senior Federal officials -- executives, legislators, and judges -- have declined 35% in constant dollars, while the compensation of workers in the private sector has kept pace with inflation. To remedy this situation, the Commission has recommended salary levels for senior government positions that are comparable to those earned by individuals of similar responsibilities in the nonprofit private sector, such as universities and hospitals. The Commission's recommendations would only bring these Federal salaries to a level approaching that of their 1969 purchasing power. In fact, the salary paid to a Member of Congress in 1969, if increased

solely to match the inflation that has occurred since then, would amount to $140,340 -- more than the Commission recommended. It is important to note that the cost of implementing the Commission's pay recommendations would be absorbed within the fiscal year 1990 budget -- it would not add to the deficit.

I join the Commission in urging Congress to abolish the current system used to supplement inadequate Federal salaries through payments from private special interests. The ban on honoraria should take effect at the same time as the proposed pay levels take effect. The current system undermines public faith in the integrity of senior Federal officials, particularly in the Legislative branch. Congress should move immediately to enact legislation that takes a comprehensive approach to the problems posed by honoraria, including payments for articles, speeches, and appearances, and other forms of financial benefits.

During my Presidency, I have been impressed with the ability and dedication of the senior Federal officials who serve our country. It is in the Nation's best interest to attract and keep highly qualified individuals for senior government positions. I ask you to support the bipartisan Commission's unanimous pay recommendations to ensure that the American people continue to benefit from the government service of highly talented Americans.

Sincerely,

Ronald Reagan

The Honorable John Glenn
United States Senate
Washington, D.C. 20510

PERCENT CHANGES (1970–88) IN:	
CPI since 1970 (projected):	204.5%
Wage/pension percent increases since 1970:	
Postal Letter Carriers (thru 1987)	239.4%
Social Security:	232.1%
Military (excl. fringe benefits):	212.7%
Private sector (thru 1986):	
White collar:	196.5%
Blue collar:	183.8%
Federal retiree pensions:	197.1%
Federal civilian (GS):	132.6%
Members of Congress:	109.6%

CONGRESSIONAL SALARY if adj. by incr. in:	
CPI:	$129,400
Postal Letter Carriers (thru 1987):	$144,200
Social Security:	$141,100
Military (excl. fringe benefits):	$132,900
Private sector (thru 1986):	
White collar:	$126,000
Blue collar:	$120,600
Federal retiree pensions:	$126,300
Federal civilian (GS):	$ 98,800
ACTUAL 1988 CONGRESS'L SALARY:	**$ 89,500**

SALARY INCREASES, 1970–1988

Year	Members of Congress	Federal Employees	Federal Retirees
1970	0%	6.0%	5.6%
1971	0	6.0	4.5
1972	0	10.9	4.8
1973	0	4.8	6.1
1974	0	5.5	12.1
1975	5.0	5.0	12.8
1976	0	4.8	5.4
1977	28.9	7.1	9.3
1978	0	5.5	7.4
1979	5.5	7.0	11.1
1980	0	9.1	14.2
1981	0	4.8	4.4
1982	15.0	4.0	8.7
1983	0	0	3.9
1984	4.0	4.0	0
1985	3.5	3.5	3.5
1986	0	0	0
1987	18.6	3.0	1.3
1988	0	2.0	4.2

SOURCES

U.S. Bureau of the Census, Data Resources Inc. (DRI), House Post Office and Civil Service Committee, Military Almanac, U.S. Postal Service, New York Governor's Office, New York Attorney General's Office, Montgomery & Fairfax County School Superintendents' Offices, and New York City Mayor's Office

CONGRESSIONAL PAY

1970 salary:	$ 42,500
1988 salary:	$ 89,500
Purchasing power of Members in 1970 dollars:	
1988:	$ 29,395

OTHER SALARY EXAMPLES

Supreme Court Chief Justice:	$115,000
Supreme Court Assoc. Justice:	$110,000
Cabinet Secretary:	$ 99,500
Governor of New York:	$100,000
Attorney General of New York:	$110,000
Superintendent of Schools:	
Montgomery County (MD)	$102,750
Fairfax County (VA)	$100,000
New York City Mayor:	$110,000

Stop the Salary Grab Campaign
National Taxpayers Union
Coalitions for America

Pay Proposal Survey

Over a three week period (January 13-31, 1989) the Stop the Salary Grab Campaign, National Taxpayers Union, and Coalitions for America contacted the offices of each Member of the House of Representatives and posed one survey question regarding the Congressional Pay Raise Proposal. Each office was asked:

> If President Reagan's proposed 50% pay raise comes up for a vote, how would the Representative vote?

Answers to the survey question are coded as follows:

Y - yes; N - no; U - undecided (refused to state position); NR - no response (refused to respond to phone requests for information)

The results of the survey are as follows:

Y - 47 (10.85%)
N - 270 (62.36%)
U - 41 (9.47%)
NR - 75 (17.32%)

Of those respondents taking a position (317 members), 85 percent opposed the pay raise.

State/ District	Name	Party	Response
ALABAMA			
1 Herbert	Callahan	R	N
2 William	Dickinson	R	Y
*3 Bill	Nichols	D	
4 Tom	Bevill	D	N
5 Ronnie	Flippo	D	N
6 Benjamin	Erdreich	D	N
7 Claude	Harris	D	N
ALASKA			
AL Donald	Young	R	Y
ARIZONA			
1 John	Rhodes, III	R	N
2 Morris	Udall	D	NR
3 Bob	Stump	R	U
4 Jon	Kyl	R	N
5 James	Kolbe	R	N
ARKANSAS			
1 William	Alexander **	D	NR
2 Tommy	Robinson	D	U
3 John	Hammerschmidt	R	U
4 Beryl	Anthony	D	NR
CALIFORNIA			
1 Douglas	Bosco	D	N
2 Walter	Herger	R	N
3 Robert	Matsui	D	Y
4 Vic	Fazio	D	Y
5 Nancy	Pelosi	D	NR
6 Barbara	Boxer	D	Y
7 George	Miller	D	Y
8 Ronald	Dellums	D	Y
9 Fortney	Stark	D	NR
10 Don	Edwards	D	N
11 Thomas	Lantos	D	N
12 Thomas	Campbell	R	U
13 Norman	Mineta	D	U
14 Norman	Shumway	R	N
15 Anthony	Coelho	D	Y
16 Leon	Panetta	D	U
17 Charles	Pashayan	R	U
18 Richard	Lehman	D	U
19 Robert	Lagomarsino	R	N
20 William	Thomas	R	U
21 Elton	Gallegly	R	N
22 Carlos	Moorhead	R	U
23 Anthony	Beilenson	D	NR
24 Henry	Waxman	D	Y
25 Edward	Roybal	D	NR
26 Howard	Berman	D	U
27 Mel	Levine	D	U

* deceased

State/ District	Name		Party	Response
28	Julian	Dixon	D	U
29	Augustus	Hawkins	D	U
30	Matthew	Martinez	D	N
31	Mervyn	Dymally	D	NR
32	Glenn	Anderson	D	N
33	David	Dreier	R	NR
34	Esteban	Torres	D	U
35	Jerry	Lewis	R	Y
36	George	Brown	D	U
37	Alfred	McCandless	R	N
38	Robert	Dornan	R	N
39	William	Dannemeyer	R	N
40	Christopher	Cox	R	N
41	William	Lowery	R	U
42	Dana	Rohrabacher	R	N
43	Ronald	Packard	R	N
44	Jim	Bates	D	Y
45	Duncan	Hunter	R	N
COLORADO				
1	Patricia	Schroeder	D	N
2	David	Scaggs	D	N
3	Ben	Campbell	D	N
4	Hank	Brown	R	N
5	Joel	Hefley	R	N
6	Dan	Schaeffer	R	N
CONNECTICUT				
1	Barbara	Kennelly	D	U
2	Samuel	Gejdenson	D	N
3	Bruce	Morrison	D	U
4	Christopher	Shays	R	N
5	John	Rowland	R	N
6	Nancy	Johnson	R	U
DELAWARE				
AL	Thomas	Carper	D	N
FLORIDA				
1	Earl	Hutto	D	N
2	Bill	Grant	D	N
3	Charles	Bennett	D	N
4	Craig	James	R	N
5	Bill	McCollum	R	N
6	Clifford	Stearns	R	NR
7	Sam	Gibbons	D	Y
8	Bill	Young	R	NR
9	Michael	Bilirakis	R	N
10	Andy	Ireland	R	N
11	Bill	Nelson	D	N
12	Tom	Lewis	R	N
13	Porter	Goss	R	N
14	Harry	Johnston, II	D	N

State/ District	Name	Party	Response
15 Clay	Shaw	R	N
16 Lawrence	Smith	D	U
17 William	Lehman	D	Y
18 Claude	Pepper	D	NR
19 Dante	Fascell	D	Y
GEORGIA			
1 Lindsay	Thomas	D	N
2 Charles	Hatcher	D	N
3 Richard	Ray	D	N
4 Ben	Jones	D	N
5 John	Lewis	D	Y
6 Newton	Gingrich	R	N
7 Buddy	Darden	D	N
8 James	Rowland	D	NR
9 Edgar	Jenkins	D	N
10 Doug	Barnard	D	N
HAWAII			
1 Patricia	Saiki	R	N
2 Daniel	Akaka	D	Y
IDAHO			
1 Larry	Craig	R	N
2 Richard	Stallings	D	N
ILLINOIS			
1 Charles	Hayes	D	N
2 Gus	Savage	D	U
3 Martin	Russo	D	U
4 George	Sangmeister	D	N
5 William	Lipinski	D	NR
6 Henry	Hyde	R	N
7 Cardiss	Collins	D	NR
8 Dan	Rostenkowski	D	Y
9 Sidney	Yates	D	U
10 John	Porter	R	Y
11 Frank	Annunzio	D	U
12 Philip	Crane	R	N
13 Harris	Fawell	R	N
14 Dennis	Hastert	R	U
15 Edward	Madigan	R	Y
16 Lynn	Martin	R	NR
17 Lane	Evans	D	N
18 Robert	Michel	R	U
19 Terry	Bruce	D	N
20 Richard	Durbin	D	N
21 Jerry	Costello	D	N
22 Glendal	Poshard	D	N
INDIANA			
1 Peter	Visclosky	D	N
2 Philip	Sharp	D	N
3 John	Hiler	R	N

State/ District	Name		Party	Response
*4	Daniel	Coats	R	
5	Jim	Jontz	D	N
6	Dan	Burton	R	N
7	John	Myers	R	U
8	Frank	McCloskey	D	N
9	Lee	Hamilton	D	N
10	Andrew	Jacobs, Jr	D	N
IOWA				
1	Jim	Leach	R	N
2	Tom	Tauke	R	N
3	David	Nagle	D	U
4	Neal	Smith	D	Y
5	James	Lightfoot	R	N
6	Fred	Grandy	R	N
KANSAS				
1	Pat	Roberts	R	N
2	James	Slattery	D	N
3	Jan	Meyers	R	N
4	Daniel	Glickman	D	N
5	Bob	Whittaker	R	N
KENTUCKY				
1	Carroll	Hubbard, Jr	D	N
2	William	Natcher	D	N
3	Romano	Mazzoli	D	Y
4	Jim	Bunning	R	N
5	Harold	Rogers	R	N
6	Larry	Hopkins	R	N
7	Carl	Perkins	D	N
LOUISIANA				
1	Robert	Livingston	R	Y
2	Lindy	Boggs	D	U
3	Wilbert	Tauzin	D	N
4	James	McCrery, III	R	N
5	Jerry	Huckaby	D	N
6	Richard	Baker	R	N
7	James	Hayes	D	N
8	Clyde	Holloway	R	N
MAINE				
1	Joseph	Brennan	D	N
2	Olympia	Snowe	R	N
MARYLAND				
1	Roy	Dyson	D	N
2	Helen	Bentley	R	N
3	Benjamin	Cardin	D	N
4	Thomas	McMillen	D	N
5	Steny	Hoyer	D	Y
6	Beverly	Byron	D	N
7	Kweisi	Mfume	D	N
8	Connie	Morella	R	N

* moved to the Senate

State/ District	Name	Party	Response
MASSACHUSETTS			
1	Silvio Conte	R	NR
2	Richard Neal	D	N
3	Joseph Early	D	N
4	Barney Frank	D	Y
5	Chester Atkins	D	U
6	Nicholas Mavroules	D	NR
7	Edward Markey	D	NR
8	Joseph Kennedy, II	D	N
9	Joe Moakley	D	Y
10	Gerry Studds	D	NR
11	Brian Donnelly	D	NR
MICHIGAN			
1	John Conyers	D	NR
2	Carl Pursell	R	N
3	Howard Wolpe	D	N
4	Frederick Upton	R	N
5	Paul Henry	R	N
6	Bob Carr	D	N
7	Dale Kildee	D	N
8	Bob Traxler	D	N
9	Guy Vander Jagt	R	N
10	Bill Schuette	R	N
11	Robert Davis	R	N
12	David Bonior	D	U
13	George Crockett	D	NR
14	Dennis Hertel	D	N
15	William Ford	D	NR
16	John Dingell	D	Y
17	Sander Levin	D	U
18	William Broomfield	R	U
MINNESOTA			
1	Tim Penny	D	N
2	Vin Weber	R	N
3	Bill Frenzel	R	Y
4	Bruce Vento	D	U
5	Martin Sabo	D	NR
6	Gerry Sikorski	D	Y
7	Arlan Strangeland	R	N
8	James Oberstar	D	U
MISSISSIPPI			
1	Jamie Whitten	D	U
2	Mike Espy	D	N
3	G.V. Montgomery	D	N
4	Mike Parker	D	N
5	Larkin Smith	R	N
MISSOURI			
1	William Clay	D	NR
2	John Buechner	R	N

State/ District	Name		Party	Response
3	Richard	Gephardt	D	U
4	Ike	Skelton	D	N
5	Alan	Wheat	D	N
6	Thomas	Coleman	R	N
7	Melton	Hancock	R	N
8	William	Emerson	R	N
9	Harold	Volkmer	D	N
MONTANA				
1	Pat	Williams	D	N
2	Ron	Marlenee	R	N
NEBRASKA				
1	Doug	Bereuter	R	N
2	Peter	Hoagland	D	N
3	Virginia	Smith	R	N
NEVADA				
1	James	Bilbray	D	N
2	Barbara	Vucanovich	R	N
NEW HAMPSHIRE				
1	Robert	Smith	R	N
2	Charles	Douglas, III	R	N
NEW JERSEY				
1	James	Florio	D	N
2	William	Hughes	D	N
3	Frank	Pallone, Jr	D	N
4	Christopher	Smith	R	N
5	Marge	Roukema	R	N
6	Bernard	Dwyer	D	N
7	Matthew	Rinaldo	R	N
8	Robert	Roe	D	U
9	Robert	Torricelli	D	U
10	Donald	Payne	D	NR
11	Dean	Gallo	R	N
12	James	Courter	R	N
13	James	Saxton	R	N
14	James	Guarini	D	U
NEW MEXICO				
1	Steven	Schiff	R	U
2	Joseph	Skeen	R	N
3	Bill	Richardson	D	N
NEW YORK				
1	George	Hochbrueckner	D	N
2	Thomas	Downey	D	U
3	Robert	Mrazek	D	Y
4	Norman	Lent	R	N
5	Raymond	McGrath	R	Y
6	Floyd	Flake	D	U
7	Gary	Ackerman	D	N

State/ District	Name	Party	Response
8 James	Scheuer	D	Y
9 Thomas	Manton	D	Y
10 Charles	Schumer	D	NR
11 Edolphus	Towns	D	NR
12 Major	Owens	D	U
13 Stephen	Solarz	D	Y
14 Guy	Molinari	R	N
15 Bill	Green	R	Y
16 Charles	Rangel	D	Y
17 Ted	Weiss	D	U
18 Robert	Garcia	D	U
19 Eliot	Engel	D	U
20 Nita	Lowey	D	N
21 Hamilton	Fish, Jr	R	U
22 Benjamin	Gilman	R	U
23 Michael	McNulty	D	U
24 Gerald	Solomon	R	N
25 Sherwood	Boehlert	R	Y
26 David	Martin	R	U
27 James	Walsh	R	N
28 Matt	McHugh	D	Y
29 Frank	Horton	R	Y
30 Louise	Slaughter	D	N
31 William	Paxton	R	N
32 John	LaFalce	D	U
33 Henry	Nowak	D	U
34 Amory	Houghton	R	N
NORTH CAROLINA			
1 Walter	Jones	D	U
2 Tim	Valentine	D	N
3 Martin	Lancaster	D	N
4 David	Price	D	N
5 Stephen	Neal	D	N
6 Howard	Coble	R	N
7 Charlie	Rose	D	N
8 Bill	Hefner	D	N
9 Alex	McMillan, III	R	U
10 Cass	Ballenger	R	N
11 James	Clarke	D	N
NORTH DAKOTA			
AL Byron	Dorgan	D	N
OHIO			
1 Thomas	Luken	D	N
2 Bill	Gradison, Jr	R	N
3 Tony	Hall	D	U
4 Michael	Oxley	R	NR
5 Paul	Gillmor	R	N
6 Bob	McEwen	R	N
7 Michael	DeWine	R	N

State/ District	Name	Party	Response
8	Donald Lukens	R	N
9	Marcy Kaptur	D	N
10	Clarence Miller	R	N
11	Dennis Eckart	D	NR
12	John Kasich	R	N
13	Don Pease	D	N
14	Thomas Sawyer	D	U
15	Chalmers Wylie	D	N
16	Ralph Regula	R	N
17	James Traficant, Jr	D	N
18	Douglas Applegate	D	N
19	Edward Feighan	D	N
20	Mary Rose Oakar	D	N
21	Louis Stokes	D	Y
OKLAHOMA			
1	James Inhofe	R	N
2	Mike Synar	D	N
3	Wesley Watkins	D	N
4	Dave McCurdy	D	U
5	Mickey Edwards	R	NR
6	Glenn English	D	N
OREGON			
1	Les AuCoin	D	U
2	Robert Smith	R	N
3	Ron Wyden	D	N
4	Peter DeFazio	D	N
5	Denny Smith	R	N
PENNSYLVANIA			
1	Thomas Foglietta	D	Y
2	William Gray, III	D	U
3	Robert Borski	D	U
4	Joseph Kolter	D	N
5	Richard Schulze	R	U
6	Gus Yatron	D	N
7	Curt Weldon	R	NR
8	Peter Kostmayer	D	N
9	Bud Shuster	R	N
10	Joseph McDade	R	NR
11	Paul Kanjorski	D	U
12	John Murtha	D	NR
13	Lawrence Coughlin	R	NR
14	William Coyne	D	Y
15	Don Ritter	R	N
16	Robert Walker	R	N
17	George Gekas	R	N
18	Doug Walgren	D	N
19	Bill Goodling	R	N
20	Joseph Gaydos	D	NR
21	Thomas Ridge	R	N

State/ District	Name	Party	Response
22 Austin	Murphy	D	N
23 Bill	Clinger	R	N
RHODE ISLAND			
1 Ronald	Machtley	R	N
2 Claudine	Schneider	R	N
SOUTH CAROLINA			
1 Arthur	Ravenel, Jr	R	N
2 Floyd	Spence	R	N
3 Butler	Derrick	D	N
4 Elizabeth	Patterson	D	N
5 John	Spratt, Jr	D	N
6 Robert	Tallon, Jr	D	N
SOUTH DAKOTA			
AL Tim	Johnson	D	N
TENNESSEE			
1 James	Quillen	R	N
2 John	Duncan, Jr	R	N
3 Marilyn	Lloyd	D	N
4 James	Cooper	D	N
5 Robert	Clement	D	N
6 Bart	Gordon	D	N
7 Don	Sundquist	R	N
8 John	Tanner	D	NR
9 Harold	Ford	D	Y
TEXAS			
1 Jim	Chapman, Jr	D	N
2 Charles	Wilson	D	U
3 Steve	Bartlett	R	U
4 Ralph	Hall	D	N
5 John	Bryant	D	N
6 Joe	Barton	R	N
7 Bill	Archer	R	N
8 Jack	Fields	R	N
9 Jack	Brooks	D	U
10 J.J.	Pickle	D	N
11 Marvin	Leath	D	Y
12 Jim	Wright	D	U
13 William	Sarpalius	D	N
14 Gregory	Laughlin	D	N
15 E. "Kika"	de la Garza	D	N
16 Ronald	Coleman	D	N
17 Charles	Stenholm	D	N
18 Mickey	Leland	D	U
19 Larry	Combest	R	N
20 Henry	Gonzales	D	NR
21 Lamar	Smith	R	N
22 Thomas	Delay	R	N
23 Albert	Bustamante	D	U

State/ District	Name	Party	Response
24	Martin Frost	D	N
25	Mike Andrews	D	N
26	Richard Armey	R	N
27	Solomon Ortiz	D	U
UTAH			
1	James Hansen	R	N
2	Wayne Owens	D	N
3	Howard Nielson	R	N
VERMONT			
AL	Peter Smith	R	N
VIRGINIA			
1	Herbert Bateman	R	N
2	Owen Pickett	D	N
3	Thomas Bliley, Jr	R	Y
4	Norman Sisisky	D	N
5	Lewis Payne, Jr	D	N
6	Jim Olin	D	N
7	D. French Slaughter, Jr	R	N
8	Stanford Parris	R	N
9	Rick Boucher	D	N
10	Frank Wolf	R	U
WASHINGTON			
1	John Miller	R	N
2	Al Swift	D	NR
3	Jolene Unsoeld	D	Y
4	Sid Morrison	R	N
5	Thomas Foley	D	Y
6	Norman Dicks	D	U
7	James McDermott	D	U
8	Rod Chandler	R	Y
WEST VIRGINIA			
1	Alan Mollohan	D	N
2	Harley Staggers, Jr	D	N
3	Robert Wise, Jr	D	N
4	Nick Rahall, II	D	N
WISCONSIN			
1	Les Aspin	D	N
2	Robert Kastenmeier	D	N
3	Steve Gunderson	R	N
4	Gerald Kleczka	D	N
5	Jim Moody	D	U
6	Thomas Petri	R	N
7	David Obey	D	NR
8	Toby Roth	R	N
9	James Sensenbrenner	R	N
WYOMING			
AL	Dick Cheney	R	N

Calendar No. 451

99TH CONGRESS } SENATE { REPORT
1st Session } { 99-210

FURTHER CONTINUING APPROPRIATIONS, 1986

DECEMBER 6 (legislative day, DECEMBER 2), 1985.—Ordered to be printed

Mr. HATFIELD, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.J. Res. 465]

The Committee on Appropriations, to which was referred the joint resolution (H.J. Res. 465) making further continuing appropriations for fiscal year 1986, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the recommended joint resolution.

* * * * * * *

QUADRENNIAL PAY COMMISSION

The Committee recommends an amendment to the Federal Salary Act of 1967 which changes the statutory requirements for the Quadrennial Pay Commission. The Quadrennial Pay Commission meets every 4 years and decides salary recommendations for the Congress, high level officials in the executive branch, and the judiciary. The Commission has just completed its work this year and has issued a report that does not recommend any salary changes at this time. Rather, the report recommends a change in the process by which salary recommendations may be approved.

Current law requires that for the Commission's recommendations to be effective, the President must first present them to Congress for approval. The Department of Justice has determined that this process is constitutionally defective as a result of the *Chadha* decision. The recommended provision will resolve this constitutional defect by establishing a new procedure as recommended by the Commission to meet the requirements of the *Chadha* decision.

Essentially, the Commission will make its decision known to the President. The President will transmit either those recommendations or some alteration of those to the Congress. They will become effective 30 days after their transmission to Congress unless the Congress jointly disapproves of the recommendations.

The next Commission is scheduled to meet at the end of next year and must report to the President by December 15, 1986. The President must transmit the recommendations to Congress with the budget. The Congress will have 30 days to pass a joint resolution disapproving those recommendations.

The provision does not alter any existing salary levels or honorarium limitations for either the legislative, executive, or judicial branches.

* * * * * * *

101ST CONGRESS
1ST SESSION

S. J. RES. 20

Disapproving the recommendations of the President relating to rates of pay of certain officers and employees of the Federal Government, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 3), 1989

Mr. PRESSLER (for himself, Mr. GRASSLEY, Mr. REID, Mr. HELMS, Mr. MCCAIN, Mr. DECONCINI, Mr. SIMON, Mr. HUMPHREY, Mr. BOREN, Mr. BURDICK, Mr. THURMOND, Mr. HEFLIN, Mr. KASTEN, Mrs. KASSEBAUM, Mr. HARKIN, Mr. BOND, Mr. BRYAN, Mr. DOMENICI, Mr. COATS, Mr. BOSCHWITZ, Mr. LEVIN, Mr. SHELBY, Mr. NICKLES, and Mr. DASCHLE) introduced the following joint resolution; which was read twice and referred to the Committee on Governmental Affairs

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JOINT RESOLUTION

Disapproving the recommendations of the President relating to rates of pay of certain officers and employees of the Federal Government, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the recommendations of the President relating to rates of pay for offices and positions within the purview of section 225(f) of the Federal Salary Act of 1967, as included (pursuant to section 225(h) of such Act) in the budget transmitted to the Congress for fiscal year 1990, are disapproved.

SEC. 2. (a) Subject to subsection (b), if the date of the enactment of this resolution is on or after February 8, 1989, the rates of pay for all offices and positions increased by the recommendations described in subsection (a) shall be the rate of pay in effect for each such office and position before such recommendations took effect.

(b)(1) The provisions of subsection (a) shall not be applied to reduce the rate of pay of any office or position which was increased during the period of February 8, 1989, through the date of the enactment of this resolution by reason other than the recommendations described in subsection (a).

(2) The provisions of the first section and this section shall not apply to reduce the rate of pay of any judge or justice appointed pursuant to Article III of the Constitution of the United States.

SEC. 3. Section 225(i) of the Federal Salary Act of 1967 (2 U.S.C. 359) is amended to read as follows:

"(i) EFFECTIVE DATE OF PRESIDENTIAL RECOMMENDATIONS; CONGRESSIONAL VOTE ON INCREASES IN CONGRESSIONAL RATES OF PAY.—(1)(A) Except for the recommendations relating to Members of Congress (which shall be subject to the provisions of paragraph (2)), the recommendations of the President which are transmitted to the Congress pursuant to subsection (h) of this section shall be effective as provided in subparagraph (B) of this paragraph, unless any

such recommendation is disapproved by a joint resolution agreed to by the Congress not later than the last day of the 30-day period which begins on the date on which such recommendations are transmitted to the Congress.

"(B) The effective date of the rate or rates of pay which take effect for an office or position under subparagraph (A) of this paragraph shall be the first day of the first pay period which begins for such office or position after the end of the 30-day period described in subparagraph (A).

"(2)(A) The recommendations of the President relating to the rates of pay of Members of Congress which are transmitted to the Congress under subsection (h) of this section shall become effective only after the enactment of a joint resolution as provided under subparagraph (B).

"(B) The joint resolution described under subparagraph (A) shall—

"(i) relate only to the issue of such recommendation to increase the rates of pay of Members of Congress; and

"(ii) be recorded to reflect the vote of each Member of Congress thereon.

"(C) For purposes of this paragraph the term "Members of Congress" includes all positions described under section 225(f)(A), except for the Vice President of the United States.".

CONGRESSIONAL VOTE TO INCREASE CONGRESSIONAL RATES OF PAY WITH INCREASES IN THE GENERAL SCHEDULE

SEC. 3. Section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) is amended to read as follows:

"(2)(A) Any increase in the rates of pay of Members of Congress which corresponds to an increase in the rates of pay in the General Schedule under section 5305 of title 5, United States Code, in any fiscal year shall become effective only after enactment of a joint resolution as provided under subparagraph (B).

"(B) The joint resolution described under subparagraph (A) shall—

"(i) relate only to the issue of the increase in the rates of pay of Members of Congress; and

"(ii) be recorded to reflect the vote of each Member of Congress thereon.

"(C) If a joint resolution is enacted as provided under subparagraphs (A) and (B), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which such joint resolution is enacted, each annual rate of pay of Members of Congress shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next

higher multiple of $100), equal to the percentage of such annual rate which corresponds to the overall average percentage (as set in the report transmitted to the Congress under section 5305) of the adjustment in the rates of pay under the General Schedule.".

CONGRESSIONAL VOTE ON ANY INCREASE IN THE RATES OF PAY OF MEMBERS OF CONGRESS

SEC. 4. (a) Notwithstanding any other provision of law, any increase in the rates of pay of Members of Congress shall become effective only after the enactment of a joint resolution as provided in subsection (b).

(b) The joint resolution described under subparagraph (a) shall—

"(1) relate only to the issue of the increase in the rates of pay of Members of Congress; and

"(2) be passed by a recorded vote to reflect the vote of each Member of Congress thereon.

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